Dec 10. 18-598 Judge Davis —

Affirmed — Judge Davis

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~349.~~ 140

THE STEAMSHIP FAVORITA, HER TACKLE, ETC., THE PACIFIC STEAM NAVIGATION COMPANY, CLAIMANT, APPELLANT,

vs.

THE UNION FERRY COMPANY OF BROOKLYN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED FEBRUARY 21, 1872.

13 Sch 60-1
Sup. 14 #18

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Samuel T. Jones, clerk of the district court of the United States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 12th day of November, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the said United States the ninety-fifth.

SAMUEL T. JONES, *Clerk.*

2 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the city of Brooklyn, on the 28th day of April, in the year of our Lord one thousand eight hundred and sixty-five.

Present, the Honorable Charles L. Benedict, district judge.

THE UNION FERRY COMPANY OF BROOKLYN
vs.
THE STEAMSHIP "FAVORITA," HER TACKLE, etc.

The libellants appear this day in the above cause, and file their libel in the words and figures following, to wit:

3 To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York.

The libel and complaint of the Union Ferry Company of Brooklyn, against the steamship or vessel known as the "Favorita," her engines, boilers, tackle, apparel, and furniture, and against all persons lawfully intervening for, or claiming any interest therein in a cause civil and maritime, of damage by collision.

And thereupon the said libellants allege and propound as follows, that is to say:

First. That these libellants before, and at the time of the injury and damage hereinafter alleged, were the sole owners of the steam ferry-boat called the "Manhasset," her engines, boilers, tackle, apparel, and furniture, which was at that time in the harbor of New York, and was a tight, staunch, and well-built vessel, and sufficiently provided with engines, boilers, tackle, apparel, and furniture, and had on board of her a sufficient and competent crew and officers to take care of, manage, and navigate her.

4 That said ferry-boat was, at the time, used and employed for the transportation of passengers, carriages, and freight over and upon the ferry run and operated by them across the East River, from the foot of Main street, in the city of Brooklyn, to the foot of Catharine street, in the city of New York, which ferry, and the course of navigation thereon, were well and notoriously known to persons navigating the port and harbor of New York.

Second. That, as the libellants are informed and believe, on the 14th

day of April, 1865, between the hours of 3 and 4 in the afternoon, the tide being then ebb, and the day light and clear, the said ferry-boat "Manhasset," on one of the usual and customary trips upon and across said river, and upon said ferry, was detached from her fastenings at the foot of said Main street, and proceeded to the mouth of the slip in front thereof, when the pilot, and those in charge of said ferry-boat, perceived said steam vessel "Favorita," proceeding up the river, on a line across the front of said slip, and at about right-angles with the course of said ferry-boat, near to the Brooklyn shore, and at such a distance therefrom, and from the said ferry-boat, that it would not be practicable for said ferry-boat to cross the bows of said "Favorita," but to avoid a collision between said two vessels it became, and then and there was, necessary and proper that said ferry-boat should pass to the left of said "Favorita," and between her and the Brooklyn shore, and that said "Favorita" should pass to the left of said ferry-boat and between her and the New York shore; that for greater certainty and caution the pilot of said "Manhasset," immediately on discovering the position and course of said "Favorita," reversed his engines, so that the "Favorita" might more easily pass to the left of said "Manhasset" and toward the New York side of the river, and that said "Manhasset" might pass between said "Favorita" and the Brooklyn shore, and also gave the usual, proper, and necessary signal by two blasts of the steam-whistle of said "Manhassset," to notify said "Favorita" that said "Manhasset" would so pass to the left of said "Favorita" and between her and the Brooklyn shore, and that said "Favorita" should so pass to the left of said "Manhassett," and between her and the New York shore; that it thereupon became the duty of said "Favorita" to sheer toward the New York side of the river, so as to facilitate the passage of said "Manhasset" on the other side of said "Favorita;" that instead of so doing said "Favorita," disregarding said signal, and making no response thereto, sheered toward the Brooklyn shore, thereby rendering it impossible for the "Manhasset" to pass to the left of said "Favorita" and between her and the Brooklyn shore; that had said "Favorita" not so sheered toward the Brooklyn shore, or had she sheered toward the New York shore she would have passed clear of said "Manhasset" and between her and the New York shore; but by reason of her paying no heed to such signal, and of her being sheered toward the Brooklyn shore, she collided with and ran into said ferry-boat "Manhasset," striking said ferry-boat just forward of the port-wheel thereof, with great force and violence, crushing in the frame and wood-work thereof, and doing other damage to said ferry-boat.

Third. That, as these libellants are informed and believe, said collision and damage to said ferry-boat, and to these libellants therefrom, was occasioned by the mismanagement, negligence, and fault of the persons in charge of and managing said "Favorita" in sheering in toward the Brooklyn shore, after such notice, by said signal, of the intention of the Manhasset to go to the left and toward the Brooklyn shore, and while said "Manhasset" was backing her engines to facilitate the passage of said "Favorita" toward the New York shore, and also in not slowing, or stopping, or backing, or sheering toward the New York shore so as to avoid said collision, or in not making a course to pass between said "Manhasset" and the New York shore, as it was the duty of said "Favorita" to do under the circumstances, or in not keeping a good lookout, or, and by other negligence, mismanagement, or bad management of said "Favorita."

And that the damages sustained by these libellants by reason of such collision, for expenses of repairs to said "Manhasset" and for loss of the use of said "Manhasset" while undergoing such repairs, and by reason of the permanent injury and straining to and of said "Manhasset," amounts to ($2,000) two thousand dollars.

Fourth. That said damage was done in the harbor of the port of New York, within the ebb and flow of the tide, and that all and singular the premises are true, and, as the libellants are informed and believe, are within the admiralty and maritime jurisdiction of this honorable court; and that said steam-vessel "Favorita" is now in the port of New York, and within the eastern district of New York:

8 Wherefore these libellants pray that process in due form of law, according to the course of courts of admiralty and of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steam vessel "Favorita," her engine, tackle, apparel, and furniture; and that all persons having, or pretending any right, title, or interest therein, may be cited to appear and answer all and singular the matters so propounded, and that this honorable court would be pleased to pronounce for the damages aforesaid, and to decree such other and further relief as the court is competent to give in the premises, and also to condemn the said steam vessel "Favorita," her engine, tackle, apparel, and furniture, and all persons intervening for their interest therein in costs.

THE UNION FERRY COMPANY OF BROOKLYN,
Per B. D. SILLIMAN, *Proctor.*

BENJAMIN D. SILLIMAN,
Proctor & Advocate.

9 EASTERN DISTRICT OF NEW YORK, *ss:*

On the 28th day of April, 1865, before me, personally appeared Cyrus P. Smith, managing director of the libellants named in the foregoing libel, who, being by me duly sworn, deposed and said that he had read said libel, and knew the contents thereof, and that the same is true to his own knowledge, except as to the matters stated in said libel on information and belief, as to which matters he believes the same to be true.

C. P. SMITH.

Sworn before me.

SAMUEL T. JONES,
U. S. Commissioner.

(Endorsement:) U. S. district court eastern dist. of N. Y. The Union Ferry Co. of Brooklyn vs. The "Favorita." Libel. B. D. Silliman, proctor for libellants. Filed April 28th, 1865.

10 *Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court.—Filed the 2d day of April,* 1865.

District court of the United States for the eastern district of New York.

Whereas a libel was filed in this court on the 28th day of April, in the year of our Lord one thousand eight hundred and sixty-five, by the Union Ferry Company of Brooklyn against the steamship or vessel "Favorita," her tackle, etc., for the reasons and causes in the said libel mentioned, and praying that said steamboat or vessel may be con-

demned and sold; and the said libellant and Cyrus P. Smith, of the city of Brooklyn, surety, parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

THE UNION FERRY COMPANY OF BROOKLYN,
By C. P. SMITH, *Managing Director.*
C. P. SMITH.

Taken and acknowledged this 28th day of April, 1865, before me,
SAMUEL T. JONES,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

Cyrus P. Smith, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of Brooklyn, and State of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

Sworn to this 28th day of April, 1865, before me,
SAMUEL T. JONES,
U. S. Commissioner.

Recorded the 28th day of April, 1865.
SAMUEL T. JONES, *Clerk.*

11 EASTERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the eastern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the eastern district of New York, on the 28th day of April, in the year of our Lord one thousand eight hundred and sixty-five, by The Union Ferry Company of Brooklyn against the steamship or vessel known as the "Favorita," her engines, boilers, tackle, apparel, and furniture, and against all persons lawfully intervening for or claiming any interest therein, in a cause, civil and maritime, of damage by collision, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and, all proceedings being had, that the said steamship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said steamship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court,

to be held in and for the eastern district of New York, on the third Wednesday of May, 1865, at twelve o'clock noon of the same day, if the same shall be a day of jurisdiction; otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Charles L. Benedict, judge of the said court, at the city of Brooklyn, in the eastern district of New York, this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and sixty-five, and of our Independence the eighty-ninth.

SAMUEL T. JONES, *Clerk.*

B. D. SILLIMAN,
Proctor for Libellant.

12 (Indorsed:) Vol. 1, page 4. Eastern district of New York, United States district court. The Union Ferry Company of Brooklyn vs. The Steamship "Favorita," etc. Monition ret'ble 3d Wednesday of May, 1865. B. D. Silliman, proctor for libellant. Filed the 3d Wednesday of May, 1865.

I hereby depute Jeremiah W. Higgins to execute the within process. Dated April 28th, 1865.

A. F. CAMPBELL,
U. S. Marshal.

Rec'd April 28th, 1865.

In obedience to the within monition I attached the steamship "Favorita," therein described, on the 28th day of April, 1865, and have given due notice to all persons claiming the same that this court will, on the third Wednesday of inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

A. F. CAMPBELL,
U. S. Marshal.

Dated May 17th, 1865.

13 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 29th day of April, in the year of our Lord one thousand eight hundred and sixty-five:

Present, the honorable Charles L. Benedict, district judge.

THE STEAMSHIP "FAVORITA" }
ads. }
THE UNION FERRY COMPANY. }

And now Charles W. West, agent of the Pacific Steam Navigation Company, owner of the steamship "Favorita," intervening for the interest of said company in the said steamer, appears before the honorable court and makes claim to the said steamer, &c., as the same are attached by the marshal, under process of this court, at the instance of the Union Ferry Co.; and the said company avers that it was in possession of the said steamer at the time of the attachment thereof, and that it is the true and bona-fide owner of the said steamer, and that no

other person is the owner thereof; wherefore it prays to defend accordingly.

CHA'S W. WEST, *Agent.*

Sworn to and subscribed this 29th day of April, A. D. 1865, before me.
SAMUEL T. JONES,
U. S. Commissioner.

BENEDICT, BURR & BENEDICT,
Proctors for Claimant.

14 (Indorsed:) Vol. 1, No. 4. United States district court for the eastern district of New York. The Union Ferry Company vs. The steamship "Favorita," etc. Benedict, Burr & Benedict, proctors for claimant. Claim of owner. Filed the 29th day of April, 1865.

15 Respondent's costs.]

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 29th day of April, 1865.

District court of the United States for the eastern district of New York

Whereas a libel was filed in this court, on the 28th day of April, in the year of our Lord one thousand eight hundred and sixty-five, by The Union Ferry Company, of Brooklyn, against the steamship "Favorita," her engines, etc., for the reasons and causes in said libel mentioned, and praying that said steamship may be condemned and sold, and the parties hereto hereby consenting that, in case of default or contumacy on the part of the respondents or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands;

And whereas, also, a claim has been filed in said cause by The Pacific Steam-Navigation Company, of Liverpool:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, hereby bound in the sum of two hundred and fifty dollars, conditioned that the respondents above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal by the appellate court.

DAVID HOADLEY.
CHA'S W. WEST.

Taken and acknowledged this 29th day of April, 1865, before me.
SAMUEL T. JONES,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

David Hoadley and Cha's W. West, parties to the above stipulation, being duly sworn, doth depose and say, that they reside, the said David Hoadley, in the city of New York, and the said Cha's W. West, in the city of Brooklyn; that they are worth the sum of five hundred dollars, over and above all their just debts and liabilities.

DAVID HOADLEY.
CHA'S W. WEST.

Sworn to this 29th day of April, 1865, before me.
SAMUEL T. JONES,
U. S. Commissioner.

Recorded the 29th day of April, 1865.

SAMUEL T. JONES, *Clerk.*

16 (Indorsed:) 1. 4. U. S. dist. court. The Union Ferry Co vs. The Steamship "Favorita." Stip. for respondent's costs. Benedict, Burr & Benedict, proc's for respond'ts. Filed April 29th, 1865.

17 U. S. dist. court.

THE STEAMSHIP "FAVORITA," ETC., *ads.* THE UNION FERRY COMPANY.

I hereby consent that the steamer "Favorita," her engines, etc., be bonded in this cause in the sum of four thousand dollars, and that David Hoadley and Charles W. West be accepted as sureties.

B. D. SILLIMAN,
Proctor for Libell'ts.

(Endorsement:) U. S. dist. court. The Steamship "Favorita" ads. The Union Ferry Co. Consent to bond. Filed April 29th, 1865. Benedict, Burr & Benedict, 74 Wall street.

18 *Stipulation for value, entered into pursuant to the rules and practice of this court.—Filed the 29th day of April*, 1865.

District court of the United States for the eastern district of New York.
In admiralty.

Whereas a libel was filed on the twenty-eighth day of April, in the year of our Lord one thousand eight hundred and sixty-five, by The Union Ferry Company of Brooklyn, against the steamship or vessel known as the "Favorita," her engines, etc., for the reasons and causes in said libel mentioned:

And, whereas, the said steamship "Favorita," her engines, etc., is now in the custody of the marshal, under the process issued in pursuance of the prayer of said libel, and is of the agreed value of four thousand dollars, as appears fron a consent now on file in said court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants or their sureties, execution for the above-agreed value, with interest thereon from this date, may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulator', undersigned, shall at any time, upon the interlocutory or final order or decree of the said district court or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree, to Benedict, Burr & Benedict, esquires, proctor' for the claimants of said steamship or vessel, abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

DAVID HOADLEY.
CHA'S W. WEST.

Taken and acknowledged this 29th day of April, A. D. 1865, before me.

SAMUEL T. JONES,
U. S. Commissioner.

19 EASTERN DISTRICT OF NEW YORK, *ss:*

David Hoadley and Cha's W. West, parties to the above stipulation, being duly sworn, depose and say, each for himself, that he is worth the sum of eight thousand dollars over and above all his just debts and liabilities.

DAVID HOADLEY.
CHA'S W. WEST.

Sworn to this 29th day of April, 1865, before me.
SAMUEL T. JONES,
U. S. Commissioner.

Recorded this 29th day of April, 1865.
SAMUEL T. JONES,
U. S. Com'r.

(Endorsed:) U. S. district court. The Union Ferry Co. vs. The Steamship "Favorita." Stipulation for value. Benedict, Burr & Benedict, proc's for cl'm'ts.

20 *Notice to the marshal.*

United States district court.

THE UNION FERRY COMPANY OF BROOKLYN
vs.
THE STEAMSHIP "FAVORITA."

SIR: The above steamship having been bonded and the costs of the clerk & com'r having been paid you will discharge the said steamship from your custody.

Dated April 29th, 1865.

Yours, &c.

S. T. JONES, *Clerk.*

To , *United States Marshal.*

21 (Indorsed:) Vol. , No. . United States district court eastern district of New York. vs.
Notice to the marshal.

22 To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The answer of the Pacific Steam-Navigation Company of Liverpool, owners of the steamship "Favorita," to the libel of the Union Ferry Company of Brooklyn against said steamship, alleges as follows:

First. These respondents have no personal knowledge whatever of the allegations of the libel, and they therefore deny the same, and leave the libellants to make proof thereof.

Second. The respondents, on information and belief, allege that the facts and circumstances attending said collision were as follows:

The "Favorita" was going up the East River against the ebb tide, having been down the bay on a trial trip, and being bound to her pier at the foot of 12th st., East River, being in charge of a competent pilot and a competent crew, having competent and proper men in charge of her engine, and wheel, and on the lookout.

When she arrived near the slip in which the "Manhasset" was, the latter was seen coming out of her slip at so great a distance ahead of the "Favorita" that she had abundance of room to pass by her in safety, and the engines of the "Favorita" were stopped and
23 backed, and her helm was put to port for the purpose of giving said ferry-boat all possible room to get by.

The ferry-boat could have and would have gone by in safety, had not her engine been reversed when she was right in front of the "Favorita," and her headway checked and she thus placed and kept right in the track of the "Favorita," whose headway could not be entirely stopped in season to avoid the blow.

Third. That everything that could be done on board the "Favorita" to avoid the collision was done; and that said collision was wholly caused by the negligence of the persons in charge of said ferry-boat "Manhasset" in coming out of said slip as she did, and in not keeping on when she had come out, and in stopping and backing improperly, and in giving improper signals, and in not having proper lookout, and seeing the "Favorita" in time, and in not being managed with proper skill, care, and precaution.

Fourth. These respondents deny each and every allegation of the libel inconsistent with this answer, and they pray that the said libel may be discontinued with costs.

CHA'S W. WEST,
Agent for the Pacific Steam-Navigation Company.

24 BENEDICT, BURR, & BENEDICT, *Proc's.*
E. C. BENEDICT, *Advoc.*

Sworn to before me this 18th day of May, 1865.
AVERY T. BROWN,
Notary Public for N. Y. County.

(Endorsed:) U. S. district court, eastern district. Union Ferry Company of Brooklyn vs. The Steamship Favorita. Answer. Benedict, Burr, & Benedict, resp's proc's, 74 Wall street. Filed May 23d, 1865.

25 At a stated term of the district court of the United States of America, for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 26th day of June, in the year of our Lord one thousand eight hundred and sixty-five.

Present, the Honorable Charles L. Benedict, district judge.

B. D. Silliman.

THE UNION FERRY COMPANY OF BROOKLYN
vs.
THE STEAMSHIP FAVORITA, HER TACKLE, &C.

Benedict, Burr, & Benedict.

Cause called on for trial.
Libellants' proctor reads libel.
Claimants' proctor reads the answer.
Libellant calls the following witnesses, who are duly sworn and examined, viz: Joel H. Titus, Edward Thomas, Thomas Freestone, William Conklin, John Steers, John Cole.

Joel H. Titus, recalled.
Libellants rest, reserving the right to call two witnesses now absent.
John Maguire sworn for claimants and examined.
Claimants read deposition of James Hall on direct, and libellants on cross-examination.
Deposition of Robert Bruce read in like manner.
" " David Robertson " " "
Trial suspended until Thursday next, June 29th, 1865.

JUNE 29th 1865.—Trial resumed.

26 John Cook,.....sworn and examined for libellants.
Erastus W. Smith..... " " " " claimants.
Theodosius F. Secor ..... " " " " "
Daniel D. Westervelt..... " " " " "
Theodosius F. Secor, recalled..... " " " " "
Testimony of claimants closed, except as to engineer, who may be called by them.
Thomas Freestone,.....recalled by lib'll'ts, and examined.
Theodore A. Chollet..... .sworn for " "
John Cole,.....recalled for " "
Robert A. Garrison.....sworn for " "
Luther Smith..... " " " "
Libell'ts rest.
Daniel D. Westervelt, sworn and examined for claimants.
John H. Burns,..... " " "
Evidence closed on both sides.

OCTOBER, 4th, & 5th, 1865.—Cause summed up and submitted.

(Indorsed:) Vol. . No. . U. S. district court for the eastern district of New York. The Union Ferry Company of Brooklyn vs. The Steamship Favorita, her tackle, etc. Extract from minutes. Filed and day of 187–.

27 U. S. district court, eastern district of New York.

THE UNION FERRY COMPANY
vs.
THE STEAMSHIP "FAVORITA," &C.

JUNE 25TH, 1865.

Mr. Van Buren reads libel.
Mr. R. D. Benedict reads answer.

JOEL H. TITUS, being duly sworn and examined, says:

I am pilot on the Manhasset; have been on ferries 2 years last April. I was pilot on the Manhasset April 14th. The collision occurred—I can't say whether in the morning or afternoon. I was going from Brooklyn to New York. The tide was last of ebb; the weather, clear. I don't remember as to wind. I saw the Favorita coming up. When I first saw her she was coming up on the Brooklyn side. My boat was then just commencing to come out of the mouth of the slip, Catharine Ferry, Brooklyn side. She was then pretty close to Brooklyn shore. I judged she was trying to keep in the eddy. There is quite a wide eddy on that side. I should suppose she was 200 or 250 feet from the Brooklyn shore

when I first saw her. I could not say the exact distance. It is
28 hard to say how far below the slip when I first saw her. I judge by the eye and not by the number of feet. She was then under way coming up. She was such a distance below that I could not have gone clear of her if I had kept on. I stopped my boat and backed her instantly; blowed two whistles. When I got her stopped, and when struck, we was 100 feet clear of the pier—our stern, I mean. We had not gone back any—may be 8 or 10 feet; I can't say; none to speak of. When I blew the whistle she sheered in towards Brooklyn shore. She commenced to sheer a short time after I blew the whistle. I blew on two different times, each time two whistles. She did not answer these whistles. She made no signal to me. Had we kept on, and she had not changed her course, there would have been a collision the same. I can't tell that she could have sheered enough to Brooklyn shore to clear me. I don't think she could, the speed she was going. She struck us just forward of the port-wheel. She broke in all the joiner-work and smashed in the hull so as made it difficult to keep from sinking. We had to get on the force-pump to do so.

Cross-examined:

Our wheel is on the upper deck. I was in it. It is usual distance from the water—pretty high.

Re-direct:

29 A large ship lay on the pier, lower side of the slip, projecting about 15 feet beyond the pier—her stern projecting. She was a light ship. There were several ships in the slip below. One ahead of the large one. I did not see the "Favorita" before I got beyond the stern of the ship.

Re-cross-examination:

As soon as we sheered by her stern then I saw the "Favorita." She was then 200 or 250 feet or so from the shore. I can't say how deep our ship is. It is about twice the length of the boat. The boat is 150 or 160 feet. When I say 200 feet I mean 200 or 250 feet from the bulk-head. She was opposite the bulkhead about 200 or 250 outside of the line of our pier. As soon as I saw her I rang the bells instantly. We cannot stop and reverse our boat in an instant. I blew the whistles instantly after. I first pulled the big jingle-bell to stop, and two gongs to go back, and then blew the whistle. I then called by trumpet to back her strong, and then saw the steamers coming; and blew again. The steamship kept sheering in shore. I have been on the "Manhasset" two years last April. She is a good boat to handle. I handled the boat myself. Conklin was in the wheel-house. He just opened the door of the pilot-house as I rang the bells. I remember nothing said between us. I had as much to do as I could to attend to the boat then. He did not assist or meddle in handling the boat. I can't give the time between my two whistles. I don't want to express an opin-
30 ion. The second was nearly right after the first. I rang the bell, called by the tube, and then blew second two whistles. I first rang the large jingle, then two gongs to back, and then blew two whistles. I then called through the trumpet to back strong. Seeing he still held his sheer, I blew two more whistles. Nothing intervened but as stated between the two whistles. She struck us just forward of the port-wheel. She came in at right angles, or nearly so. She crushed the hull. There were two other men besides Conklin in the pilot-house. One was in a chair and the other standing. They did not belong to the

boat. I had seen one of them before. I didn't know the other. They did nothing. I don't remember speaking to them after we left the bridge. My attention was on my vessel after that. One was named ———Reif. I think the other was named Tobin. I have seen one of them since; not within a week—I think inside of two weeks. I think one lives in New York—Reif; the other, in Brooklyn. They were passengers on the boat. Conklin was then a passenger. He used to be deck-hand on the ferry. I should say we backed 10 feet—perhaps not so far. Just getting a little stern-way when struck; we had not drifted below the slip. I backed right into the slip and called to a
31 deck-hand to drop the pin, and ran to the other end and went back into the other side of the A frame. I came out of the lower side of the A and went back into the upper side of the A.

Re-direct examination:

The "Favorita" did not back. She checked her engine, and then went ahead again. She was going ahead at the blow. I could see the wheel. She checked her engine after I blew the first two whistles. The wheel were turning forward 12 feet from us. Her engine would not back, perhaps. There was nothing to indicate that the engine wouldn't work, except that they checked her. I did not see her all the time.

THOMAS FREESTONE, being duly sworn and examined, says:

I am pilot on the steamboat Mattawan, that runs to Keyport, N. J. I saw the collision. I was standing outside the pilot-house, on the ferry-boat "George Law." The "George Law" was in the slip next below the Catharine Ferry, on the New York side of the river. I saw the steamer and heard the whistle from the ferry-boat, coming out of the slip. I saw this little steamship coming upon the Brooklyn shore against the ebb-tide, nearly abreast of Fulton Ferry, on the Brooklyn side. I said to a gentleman alongside of me that she was going pretty
32 fast, and ought to be further out in the river. He got up between Fulton and Catharine Ferry, on the Brooklyn side. I then saw the pipe of the ferry-boat, coming out of the slip. I could not see the boat, but the pipe. I then saw the bow of the ferry-boat, just coming out of the slip. I then told the man alongside of me that I thought there was going to be a collision. I should judge the ferry-boat got out 100 feet from the end of the pier when they came together. The steamer was heading, quartering the tide in towards Brooklyn. She had just turned the bend, heading right up along the docks. Her engine stopped after the pilot gave his whistle from the ferry-boat. They ran over the lower center, and then came up and ran over the upper center. She kind of checked as she came up and went over the upper center, and then they came together. They got no turn back on her. I had a side-view and could see. I should judge the rate of speed when I first saw her was 16 or 17 knots; seemed to be going fast. The speed was what made me take so much notice of her. I have navigated the river and harbor about 12 years. I was pilot of steamboats and ferry-boats.
33 I have been on Fulton Ferry, on Peck Slip Ferry, and other ferries. At the collision the steamship was in the neighborhood of 100 feet from the bulk-head above Fulton Ferry. I should judge when she turned the bend, she was 100 feet from the shore. The bend is the next pier above Fulton Ferry. I first saw the steamship at Fulton Ferry. When she passed the lower pier of Fulton Ferry she was 200 feet from the pier. She then hauled in shore. There is an eddy-tide there

By hauling in she was in the eddy. Sometimes the eddy forms all the way down to Fulton Ferry from Catharine Ferry. It is not as strong at Fulton Ferry. Below Fulton Ferry there is a wide eddy. After passing Fulton Ferry, the lower pier, she hauled in, and at the collision was about 100 feet from the piers, as near as I could judge. I thought there would be a collision, because I was satisfied that the boat could not see him while in the slip, she was in so close, and she was going so fast I did not think there was any chance after the boat got outside of the slip. The "Favorita" was a side-wheel steamer, not of the largest class. She was rather higher out of water than her class; very high forward. If he had sheered off-shore, instead of sheering in-shore, he would have cleared the ferry-boat.

34 Cross-examined:

I was standing on the George Law, on the New York side, the upper slip of Bridge-st. Ferry, below Catharine Ferry; that is, above Fulton Ferry. I was pilot on the "George Law" then. A man named Pangborn was with me. The "George Law" was waiting for her time. When I first saw the Favorita she was off the Fulton Ferry, on the Brooklyn side. I saw the steamship first before I saw the ferry-boat. She was new, and turned a very nice wheel. After the steamship had passed the Fulton Ferry, and going up along the shore, I saw the ferry-boat just ahead of her. I saw her pipe through the rigging of the ships. It was about 100 feet from the piers where they came together. I saw the ferry-boat stop her engine the moment she got out of the slip. I could tell the engine stopped by the motion of her wheel—by the stopping of her wheel. I saw the wheel stop on the ferry-boat not one-half a minute from the collision—a very short time before the collision. I had a fair side view of the ferry-boat. Her wheels backed.

EDWARD THOMAS, being duly sworn and examined, says:

I was on the ferry-boat at the collision, standing on the forward
35 part of the boat, port-side, as look-out. I was deck-hand. When I first saw the "Favorita" she was about off Marston & Powers' coal-yard. Our boat was then about 50 feet out of the slip. Her stern was 50 feet out from the slip before I observed the steamer. Our boat went out about one half a minute more, when the pilot rang by gong to stop—a jingle, and blowed two whistles, and immediately gave two gongs to back. The whistles were not answered by the "Favorita." The bells on our boat were promptly obeyed. The "Favorita" sheered in towards the Brooklyn shore. She did not stop. I noticed her wheels. She might have slowed down, but if she did I did not notice it. Her wheels seemed to stop about one-half a second before she struck us. She was a very small space from us when her wheels no more stopped than she struck us. I heard four whistles from our boat. There was a very short interval between the two whistles, but the interval was distinct. She struck us just forward of the port-wheel. I believe we were just getting stern-way on us when she struck us.

Cross-examined:

I have been on this boat a year last May; always as deck-hand. She
36 was off Marston & Powers' dock when I first saw her. She was 120 feet off shore then. It is more than 120 feet from our dock to Marston & Powers' dock. I was standing on the forward part of the boat. I stayed there till she struck us and backed off again. I heard some remark from the pilot-house of the "Favorita" after the blow; nothing before.

Re-direct:

If we had gone on, I think we would not have cleared her.

JOEL H. TITUS recalled, says:

I think, by keeping on, we could not have cleared her. The distance was too short.

WILLIAM CONKLIN, being duly sworn and examined, says:

I work in the navy-yard. I was five months on the Catharine Ferry. I was at this collision. I was just going into the pilot-house when I first saw the steamship. As she came up, I happened to look around and saw this vessel coming up. He rang his big jingle to stop, and two gongs to back. He gave her two whistles. There was no answer from the other vessel. I observed the wheels of the steamer;
37 they stopped for a second, and then went forward again, and were going forward till the blow. The steamer sheered in-shore. Titus gave two whistles a second time. When I first saw the "Favorita" she was from 150 feet to 200 feet from shore. She was then very close to us, a little farther than from here to the city-hall. I heard no signal of any kind from the "Favorita."

Cross-examined:

I went up to the wheel to see Titus. There were two others in the pilot-house. I was a passenger. I went up there after the boat got out of the slip. I got up through the stair-way. I looked down just as I took hold of the knob of the pilot-house. I put one foot in; I didn't say anything. She was then close to the "Manhasset," sheering toward the Brooklyn side. I saw the ship coming up, 150 feet off, or a little more. She was above Marston & Powers' dock; then Titus rang the bell before I got to the door; but he rang after I got on deck. The staircase is right by the center house—by the Brooklyn end of the center house. She was out of the slip before I started to go up there. The engine of the boat stopped when they rang the big jingle, and backed when the gongs rang. I did not see the wheels, and don't know
38 as the wheels stopped and backed. He blew two whistles a second after the first two whistles. Between, I saw Titus put his mouth to the trumpet and tell the engineer to back her fast. When I first saw the "Favorita," she was 150 to 200 feet from the end of the piers on the Brooklyn shore. She was then heading up the river, a little sheered in-shore—a pretty rank sheer in-shore. She stopped her wheels an instant, and then commenced revolving around again. She was going very fast. After the blow, I heard the captain of the Favorita came out and said: "Why the hell don't you go ahead?" That is all I heard. I am in the boiler-shop in the navy-yard.

JOHN STEERS, being duly sworn and examined, says:

I am deck-hand. I have followed the water on the east and west river 25 years. I saw the collision. I was forward of the hood. I was on the port side—on the main deck forward of the hood there when I first saw the "Favorita." I saw her soon as we cleared the slip on the lower side. I should think she was then half way between the Fulton and Catharine Ferry. She was then 150 to 200 feet outside of the end of the piers. I don't think we could have cleared her by going
39 ahead. I heard two signals from our boat; they were two whistles; they were distinct. They were not answered by the "Favorita." The big jingle rang to stop, and two gongs to back. This was before the

signal—before any whistle was blown. These two whistles were blown, and a moment after—a half second—two more were given. No response was given, except just before he struck, when not over ten feet off, if that, he said: "Why the hell don't you go ahead?" The wheels of the "Favorita" were going ahead. I think there was a pause in the wheels. It appears to me as if they were trying to stop and back, but couldn't. The wheels continued to go ahead till within 10 feet of us. She was coming pretty fast.

Cross-examined:

When I first saw her she was a little sheered in towards the Brooklyn shore, bound up the river—a little heading in.

JOHN COLE, being duly sworn and examined, says:

I am pilot on the Fulton Ferry. I have been on ferries for the last 18 years—on the South, Hamilton ave., Wall, Catharine, and Fulton ferries.

I saw her just before the "Favorita" struck the ferry-boat. I was
40 going into the Brooklyn side, Fulton Ferry. I was then pilot on the boat. I saw the "Favorita" first below the Fulton Ferry, on the Brooklyn side. She was then about off Dupont's dock. I can't say how near she passed the Fulton Ferry pier. I judged her to be 160 to 200 feet from Marston & Powers' dock before the collision. I mean from the line of Marston & Powers' dock—160 to 200 feet, when off Marston & Powers' dock. At the time of the collision she was 160 feet off from the end of the pier. I saw the ferry-boat as she passed out of the slip. I thought there would be a collision then. I thought the ferry-boat could not get out of the way from him. The "Favorita" was going pretty fast. She was going against the tide. She was in the tide at the collision. She was sheering in-shore towards the eddy. The eddy breaks from two or three docks above Catharine Ferry—forms an eddy—slack-water. The Favorita was working towards the eddy. I don't hardly think the ferry-boat could have cleared her by going on her course—not the way the Favorita was then heading. If the ferry-boat had continued straight on the "Favorita" would have hit the ferry-boat on the stern. I noticed the wheel of the ferry-boat. They
41 were revolving towards Brooklyn. I saw no vessels in the way.

Cross-examined:

I was pilot of the Fulton Ferry. We can run across in three minutes. I saw the "Favorita" before I got out of the New York slip. I saw she was going pretty fast. I next saw her around Marston & Powers' dock, and she was then 150 to 200 feet off the docks, heading in shore. There was nothing to prevent me from having a clear view. She lay a little quartering to east. I saw the ferry-boat after she got about 50 feet from the dock; her stern about 50 feet out. The "Favorita" was just below her—I should judge about between Marston & Powers' dock and the collision. I saw the wheels of the ferry-boat work back. I am sure of that. I did not see the wheels of the "Favorita" go back. I saw them stop and then start ahead again. I saw the Manhasset on the upper side of the Favorita. This was while I was going into Fulton Ferry dock with my boat. I heard no hail.

Libellants rest.

42 *Testimony for claimants.*

JOHN MAGINN being duly sworn and examined, says:

I am a branch pilot; have been for about 45 years. I was pilot of the "Favorita." We had been in the lower bay. There *was* vessels passing up and down made us go *go* so far to the Brooklyn shore. We met the first vessel between the two reefs. We ported to clear her. We met several others, and ported for them all. The tide was ebb—last quarter. This course brought us to within 100 yards from the end of the dock at Fulton Ferry. There were a number of vessels bearing down the river. We saw the Manhasset first when half way between Brooklyn and Catharine ferries. I saw her coming out of the slip. We had slowed our engine for a schooner before we saw the ferry-boat. Before that we had been at full speed, about seven knots, by the land. I saw the ferry-boat come out of the slip. I then ported to pass under her stern. Her wheels had passed our stern—about half way from the wheels to the stern—when she stopped. We immediately stopped our engine, and the ferry-boat began to back. She got no stern-way on her before we struck. The pilot left and run to the other end of his
43 boat. As the pilot ran past our bow some of those on our boat asked him why he didn't go ahead. We did all in our power to avoid collision. The bells rang on our boat—a bell to go back. If the ferry-boat had gone on she would have cleared us. Our helm was aport, sheering under her stern, as we had plenty of room to do so. We could not change and go past her bows after she stopped, she was so far past us, and so near. We took our sheer to go under her stern, as soon as we saw her, and by leaving his wheel-house he lost control of his vessel. The hail from our vessel was, "Why don't you go ahead?" The captain and Mr. Secor and several others were standing on the bows. I heard the hail from them clearly. The man made some answer when he went past to the other wheel-house; made some remark, but don't know what he said. I could have done nothing more than I did to avoid the collision. There were a good many vessels in the East River then. It was 4 o'clock p. m., about. I could not go up in the middle of the river. Vessels were passing and beating up.

Cross-examined:

I was in the wheel-house. I did not leave it. I had been in the wheel-house the whole day. We came off the balance-dock in the
44 morning. She had never been out before under steam. We went down to S. W. spit, about 17 miles. I don't recollect her stopping from the time she left the balance-dock till she got back. We had the engineer and builder on board. There was no party. We had a little bread and cheese. It was the engine-trip; not a trial-trip. I think the highest speed we attained was something over ten miles. We tested it by the measured miles. There was no one in the pilot-house but me and the quartermaster; I don't know his name. I don't think any one else had been in the pilot-house. The wind was south-south-west—a strong breeze.

Deposition of James Hall, master, read for claimant.

Deposition of Robert Bruce, mate, read for claimant.

Deposition of David Robertson, seaman at wheel, read.

Adjourned to Thursday, June 29th, 1865.

FRIDAY, *June 30th*, 1865.

Libellant proceeds:

JOHN COOK, being duly sworn and examined, says:

I am an engineer on the ferry: have been such five years. I
45 was on the Manhasset at the collision. I recollect it well. We left Brooklyn slip ten minutes to four, and we had scarcely cleared the end of the pier when I got the bell to stop, and reverse the engine. The first signal I received was the big jingle-bell; that means to stop immediately. We have the gong to slow and stop her. The big jingle means to stop without slowing. When I heard it, I stopped the engine immediately—soon as possible. After stopping I received the two gongs immediately to back her. They were obeyed immediately. She was worked as quick as possible to do it. No two engines work exactly alike. This was in good working condition—worked quickly and promptly. I did not see the Favorita. Our engine is an incline engine—it works on an incline without any beam. No part of it is visible above deck. She struck us within a few feet of the water-wheel, forward of it, towards the New York end of our boat. I can't give the tonnage of our boat.

Cross-examined:

I believe our boat was 150 feet long, or in that neighborhood. I can't say the distance from the bow to the water-wheel. The water-wheel is not in the middle of the boat. I can't tell which is the shortest
46 end of the boat. I think the diameter of the wheel is 21 feet.

Libellants rest.

Testimony for claimants.

ERASTUS W. SMITH, being duly sworn and examined, says:

I was on the "Favorita" as superintending engineer for the owners, and was present to witness the performance of the machinery. I saw the collision. I was standing about half-way between the engine-room and the pilot-house at the time of the collision. When I first saw the ferry-boat I was standing a little in front of the pilot-house, on the starboard side of the vessel. The ferry-boat, when I first saw her, was then coming out of her slip. I saw her come out. I don't think I saw her when they began to back. When I saw her come out I thought it was dangerous for her to come out so near a vessel coming up the river. I was then under the impression that there would be a collision. Our vessel was then between Fulton and Catharine Ferry—only two slips below Catharine Ferry. I should think we were about two lengths of the steamboat out from the end of the piers. I did not notice the distance out particularly. I should think the ferry-boat must have got out 200 or 300 feet from the end of the pier at some time. I heard the bell ring to
47 shut off, to stop, and then two bells to back, and I ran back to tell the engineer to back hard, as I thought he would not know the emergency. I did call so to the engineer to back hard, for I then thought there would be a collision. I then stepped out of the engine-room, and went forward to witness what would happen. I saw the ferry-boat backing. She had backed a little more than half-way past our stem when we came in collision. I think if she kept on without backing we should not have touched her. I think I heard the pilot of the "Favorita" blow a whistle as soon as she came out, but am not positive on that point. Before the ferry boat commenced backing I think

there was space enough for the steamer to have gone between her and the piers, though the distance was then too near, I think, for the steamer to have altered her course and gone under her stern. I have no distinct recollection as to hearing whistles from the ferry-boat. If the "Favorita" had known five minutes before that the ferry-boat was coming out, she could have kept nearer in-shore, and gone under her stern. It would have been sure to have produced a collision for the steamer to have attempted to go across her bows if both vessels had continued under headway. After the ferry-boat had reversed her engine,
48 there was not room for the steamer to have changed her course and gone across her bows.

THEODOSIUS F. SECOR, being duly sworn and examined, says:

I am at the Allaire Works; am engine-builder. I was on the "Favorita" on her engineer's trip. I saw the collision. I was on the main-deck, about midships—a little forward of the pilot-house. When I first saw the ferry-boat she was coming out, her pilot-house just clear of the end of the pier. The "Favorita" was then a length or a length and a half from the ends of the piers, and not far from twice her length from the ferry-boat, as near as I can judge. The "Favorita" is about 200 feet long, I think. The ferry-boat continued to come out for some little space. I watched her very closely, I assure you. She was coming out, and we had rung one bell to stop, and had stopped. I felt quite sure that we would clear her if she kept on, but the moment she stopped, she commenced backing immediately, and I felt then there must be a collision. The ferry-boat continued to back. I don't think she had got out as far as the bow of the "Favorita" when she began back-
49 ing. I would not be positive as to that, but I don't think she had. I have seen steamers work; have had experience in trying steamboats; have been 25 years building engines for steamboats. There was not time or space for the steamer to have crossed her bows after she began to back. (Objected to.) I go frequently with ships when they try engines. I don't profess to be a nautical man. I say, and did say at the time, that had the ferry-boat kept her course we would have gone clear under her stern. There is no doubt about that. We struck her just forward of her wheel; so far forward as to clear her wheel, I think. I don't recollect hearing any hails. I don't recollect whether there was any whistle blow from either side.

Cross-examined:

I did not go off deck from the time I saw her till the collision. The engineer's room was below the main-deck; can see down into it where he stands. I was not near the engine at any time after the ferry-boat came in sight. I saw the beams; I could see that from where I stood. I looked at it, for I was quite anxious to see whether she was
50 backing. I could tell from the angle of the connecting-rod, and I saw that she backed. I recollect looking when they rang the bell to stop and to see whether she minded the bell to back. They rang to stop, and then to back, and she backed as soon as practicable, considering the speed of the boat. The engine would naturally make a few turns before it would stop. I recollect seeing the engine stop. I was not near enough to the engine to see whether the engine caught on the center, but judging from the way the boat stopped, considering the way the boat had she did not. I was satisfied that she was backing. The smoke-pipe of the "Favorita" is forward of the engine. I stepped to the larboard, so as to bring the beam in view. I can't state the time

between first seeing the ferry-boat and the blow. After our bells rang to stop I walked up near the bow; saw we was likely to strike her, and I went back to where I was and stood looking at her. The ferry-boat was on her course when I got to the bow, but I stood a second or two, and saw her stop, and then I thought there would be a collision. She commenced backing, and I went back. I think I saw the ferry-boat
51 fully as quick as I heard our bell; I was then just forward of the pilot-house, on the main-deck—might be 50 feet from the stem or thereabouts. From where I stood, I could see the ferry-boat over the bulwark of the "Favorita." She commenced backing very soon after I heard our bell. The Manhasset made some few revolutions ahead after that. I can't say how many. She did not stop till I got forward. I don't recollect whether there was a ship at the pier below, but I mean I saw her by the pier as she came out. I don't recollect seeing a ship there. When I first saw her her pilot-house was just clear of the end of the lower pier of her slip.

Re-direct:

The pilot-houses of the ferry-boat are pretty high up. I can't say whether the Manhasset's pilot-house was high enough to look over a ship. The engines of the Favorita worked well.

DANIEL D. WESTERVELT, being duly sworn and examined, says:

I have been ship-builder nearly 22 years. I was on the Favorita. I built her. I stood on the port-side of the pilot-house, on the spar-
52 deck. The Favorita was rigged for sails. She had two masts. Her decks that day were about 15 feet from the water. The pilot-house was about 2½ feet above that. Her masts may have gone 60 feet above the main deck. She had no sails bent. The main cross-trees were 30 feet from the deck. I first saw the boat when she was coming out of the slip—the bow just out of the slip. I looked in the direction of our pilot, believing that there would be a collision unless proper judgment was used by the pilots of both vessels, as we were distant then about 1,000 feet. The pilot on the ferry-boat stood on his course. We rang the bell to stop our vessel, which was done immediately. The ferry-boat ran out probably four lengths, and then stopped, then reversed the engine and backed. We were probably 2 or 3 of our lengths from the pier-heads. She backed one or two lengths, I should think, before we struck her, just forward of the wheel—5 or 6 feet forward of the guard-beam—7 or 8 feet forward of the wheel itself. I know our engine stopped immediately on ringing of the bell from the fact that the beam stopped. I think there was space enough to have gone under her stern if the ferry-boat had kept on.

53 (Objected to.)

After she stopped there was not time and space to have passed her bow. I never changed my position. I gave earnest attention to her—very earnest. I can't say whether the pilot of the ferry-boat left his wheel. I saw a man leave the pilot-house after she began to back, and run towards the middle of the boat. I can't say it was the pilot. I think there were two men in the pilot-house. I am under the impression that the Favorita was heading in towards Brooklyn. We struck her very near at right angles. I looked at the injury the next day. The angle was more acute on the New York side. The Favorita was not under full headway. Her time varied during the day. Her fastest speed was up the North River. She then ran 14 knots. Steamers always slow down going through the East River. The tide was flood, strong flood,

at the collision, as my impression is. We were probably going through the water, up the East River, 10 knots an hour; probably 8 knots when we struck the ferry-boat. I heard no hails, and made none. I don't think there was a word spoken. The Favorita's smoke-pipe, I
54 should say, may have been 16 to 18 feet above the top of the light-deck—the house-deck—22 feet above the spar-deck, on which I stood.

Q. Was the Favorita visible from the pilot-house of the ferry-boat before she left the slip?

(Objected to.)

A. I can't answer that. I saw the ferry-boat as she came out of the slip. The view from her pilot-house was unobstructed as she came in view. I saw her pilot-house.

THEODOSIUS F. SECOR, recalled and examined, says:

The smoke-stack of the Favorita was about 22 feet above the main-deck. The first thing I saw of the ferry-boat was her pilot-house, as she was coming out of the slip.

The claimants rest, with privilege to call the engineer.

THOMAS FREESTONE, recalled by libellant, says:

I was on the George Law, on the upper-deck, outside the pilot-house. There were no vessels to impede the navigation of the center of the river by steamboats.

(Objected to as not in the libel.)

55 The wind was very light, from the southward. I was between James st. and Catharine st., New York side. I was below the ferry-slip on Brooklyn side. There was a vessel on the south side that prevented me from seeing the ferry-boat till she came out of the slip. I might have seen her smoke-pipe. I could see her smoke-pipe after she had left the bridge and got pretty well out in the slip.

Cross-examined:

There were half a dozen or more vessels that prevented me from seeing her till she came out towards the end of the dock. Then I saw her pipe. I kept my eyes on the Favorita after she passed Fulton Ferry. I looked at her because she was a nice ship. I never saw her before.

THEODORE A. SHOLLET, being duly sworn and examined, says:

I am engineer of the steamer Stamford, that runs to Bridgeport. I saw this collision. I stood on the Catharine st. dock, New York side. I did not see any vessels that would prevent the steamer from sailing up the centre of the river. I observed the "Favorita." It was ebb-tide—half-ebb. She was going along pretty fast. She came up to within 400 or 500 hundred feet of Catharine Ferry slip. They undertook
56 to back her. They stopped her, but she did not pass the lower center; it came up again without passing the center, and she did not back until after the blow.

Cross-examined:

I did not notice as to the wind.

JOHN COLE, recalled and examined, says:

I was on the river at the collision, crossing from the New York side in a ferry-boat. I did not take notice of any vessels passing in the river that would prevent the steamer from passing in the center of the river.

ROBERT H. GARRISON, being duly sworn and examined, says:

I am pilot on the Catharine-street Ferry. I recollect the occasion of this collision. I was on one of the Fulton ferry-boats at the time. There were some two or three very large ships lay on the south side of the ferry-slip. It was impossible to see over those ships from the upper-deck of the ferry-boat at that time of the tide. One lay on the pier next below them and one on the pier next below that on the same line. This was the ship City of Brooklyn. The ships were light. I went in and out of the Catharine slip that day up to noon. On starting from the slip we could not see over them unless a vessel with a very high mast.
57 The south pier is adjacent to the slip. I was on the boat with Cole. I did not see any vessels to prevent the steamers passing in the center of the river. I should have seen them if there had been. I can't remember what was the name of the boat I was then in. It was the Hamilton or the Republic. We met no vessel passing up and down on that trip over. Our smoke-stacks are about 25 feet above the upper-deck on which our pilot-house stands.

Cross-examined:

The ship City of Brooklyn lay at the next pier below, so that her stern came out to the end. I don't know the name of the vessel that lay at the ferry-pier. She hailed from Boston. I don't know the tonnage of either of them. I was in the pilot-house with Captain Cole.

Re-direct:

The Boston vessel's stern did not project beyond the pier. She was a little inside of the end of the pier. The City of Brooklyn was the largest of the two ships, according to my impression.

LUTHER SMITH, being duly sworn and examined, says:

I have been connected with ferries 13 years; as pilot the first 8 years. I am now superintendent of pilots. Soon after this collision I went on the Brooklyn, on the same day, just at night, to see if a vessel
58 could be seen coming up on the Brooklyn shore. I took the cashier of the Ferry Company up likewise. We came to the conclusion we could see no vessel till we cleared the end of the pier, because of vessels lying on the lower side for two or three piers down. There were some dozen vessels, I think likely, lying in that vicinity—ships, barks, etc. The vessels lying adjacent to the slip were light. The vessel lying furthest out at the lower pier of the slip was a large ship. I did not notice very particular whether she projected out beyond the end of the pier. The smoke-stack of the Manhasset was 45 or 50 feet above water, I should say. I have not measured it. The shore takes a bend there south of the Catharine Ferry.

Cross-examined:

I went over there with the cashier. I went on to the boat in the Catharine slip, and came to the conclusion that we could not see from the ferry-boat over the vessels below. The ship next the ferry-slip was the largest, and on her main-deck she had a house, and had spars on the top of the house, and a small boat. This ship lay at the ferry-pier. She had a house midships, and a house aft. The spars did not extend from one house to the other. The ferry-pier is 250 feet or 300 feet long. The lower side of the ferry-pier is 400 or 500 feet long. From the
59 bridge to the end of the lower pier was 250 to 300 feet. I think the ship was 200 feet. There was another vessel ahead of her, so that took up all the pier. I stood on top of the deck of the ferry-boat.

They were all full there from Marston & Powers up to our slip. I looked across the vessels, probably three or four times, to see what I could see. They were ship-spars which I saw on top of the house. The spars were on the ship next below the ferry-pier. The river was very clear of vessels at the time I crossed.

DANIEL D. WESTERVELT, recalled by claimant, says:

I know the City of Brooklyn. She would stand out of the water, light, 17 feet. I have repaired the Union ferry-boats. From the surface of the water to the pilot-house is about 20 feet.

Cross-examined:

I speak of all of the new boats built within the last three or four years. I know nothing particularly about the Manhasset.

JOHN H. BURNS, being duly sworn and examined for claimants, says:

I was engineer of the "Favorita" at the time of this trip. The engine worked well. All hands were pleased with it. I was in the engine-room, below the deck. I heard the bells, and obeyed them as near as I possibly could. The bells struck twice; first one, and then two. Be-
60 sides that, I received word from the deck—"back! back!" One bell meant to slow her immediately When I saw the two, I unhooked immediately and backed. The engine did not work back immediately. She was under headway, and in a moment or two she backed. A vessel under headway will not back immediately. As soon as she overcame her headway, then she backed. I heard her fetch up against something at the blow, but couldn't tell what it was. She did not stop on the center at all. My presumption is that the engine was backing at the blow. Her headway was broken.

Cross-examined:

I erected the engine for the Allaire Works, and acted as engineer on this day, but was not attached to the ship as engineer. To the best of my knowledge, her wheels were turning back at the blow. I don't think they had more than one turn back at the collision. I had been at the engine for an hour. We stopped her several times on the trip to key up, and to see how fast she would back, and to oil up. She was sometimes stopped 20 minutes for these purposes. There was nothing done to the engines after we came back but polishing.

Testimony closed.

61 NEW YORK, *April 22d*, 1865.

Steamer Manhasset & owners, to Benjamin T. Jones, Dr., shipsmith, No. 255 South street,

Repairing 3 handle co*al*-chisels, @ 37½; rep'ring *sheetan*, 25 c'ts	$1 37
Repairing 44 bolts, @ 15; 7 lb. bolts, @ 16; 4 rings, @ 5	7 92
Repairing dog, 25; *poccu'eg* 3 augurs, @ 25	1 00
	$10 29

Received payment,

(Written across the face:) Included.

Brig Aura and owners, to propeller S. E. Babcock and owners.

For towing from pier 42 E. R., to pier 39 E. R. $10 00
Correct: Capt. GEO. KING.
Received payment.

62 NEW YORK, *April 24th*, 1865.

Ferry-boat Manhasset and owners, to the N. Y. Floating Dry-Dock Co., office 254 South street.

To raising, 463 tons, @ 25 c'ts $115 75
" 4 lay days, @ 15 c'ts 277 80

$393 55

(Written across the face:)
Approved May, 1869.

N. E. PIERREPONT.
M. B. MORSE.
CHAS. E. BIRD.
J. S. T. STRANAHAN.
E. DODGE.
JAMES HOW.

Brro. on the book.

C. P. SMITH.

(Endorsed:) 529. $393 55. N. Y. Floating D. D. Co. May 1st, 1865. Exh. C. S. T. J.

63 Ex. B. (Copy.)

Bill of repairs to ferry-boat Manhasset.

JOINERS.

35 days labor $122 50
2,000 feet light lumber 150 00
Nails 2 00
Painting, etc. 10 00
Whole amount, ...

SHIP CARPENTERS.

Labor 116 00
Pine lumber 25 00
Oak 32 50
2 knees 7 00
3 days' caulkers 12 00
Oakum 4 00
Spikes 6 00
Bolts 8 00

$211 00

Damage to boat $1,000 00

P. S. Rosevelt & Griffiths' bill must be in the office.
(S'g'n) G. W. WRIGHT.

64 Ex. C.

NEW YORK, *April 2d*, 1865.

Ferry-boat Manhasset and owners to Rosevelt & Griffiths, Dr.

To 816 f't oak, 9c.; sawing 20s.	$ 75 94
Cartage, 3.00	3 00
10 lbs. spikes, 18c.; 12 wedges, 6c.	2 52
26 " gal. spikes, 20c.	5 20
147 locust treenails, 6c.	8 82
T. wedges, 8s.	1 00
42 lbs. spun oakum, 20c.	8 40
2 gal's oil, 1.80	3 60
62½ days' work, $5.00	310 63
By Smith's bill	10 29
Towage	10 00
Labor	9 37
Received payment.	$448 77

(Written across face:)
549 P. Bro. in store-book X.

C. P. SMITH.

Approved May 8th, 1865.

N. E. PIERREPONT.
W. B. MORSE.
EDWARD DODGE.
JAMES
CHAS.
J. S. T. STRANAHAN.

65 (Indorsed:) 549. $448.77. Rosevelt & Griffiths. May 1, 1865. Ex. A. S. T. Jones.

NEW YORK, *April 18th*, 1865.

Brig Aura and owners to Barker & Cochran, Dr., (riggers, No. 77 Rutgers' Slip.)

For transporting *visfer* on dock, 1⅞ days' work $9 37

(Written across the face:) Included.

66 FAVORITA EXHIBIT.—S. T. J.

NEW YORK, *M'ch 30th*, 1866.*

C. W. West to T. D. Vanderveer, Dr.

To 16 twined stanchons, 8s.	$16 00
" 125 feet of oak, 9c.	11 25
" 3 lbs galvanized nails, 16c.	48
" 1 cartage, 8s.	1 00

*(In pencil:) This date should probably be 1865. S. T. JONES, *U. S. Com'r.*

" 8 days' work, $4.00	32 00
" iron-work and repairing netting	15 00
" painting	5 00
	$80 73

(Written across the end:) Steamship "Favorita."

67 NEW YORK, *April 22d*, 1865.

Steamship "Favorita" and owners, to the Westervelt Ship-Yard, Houston st., East River.

Repairing damage to stem and forward larboard side, caused by collision with Catharine Ferry-boat.

13¼	days' carpenters and fasteners, 4.95	$65 59
3	" caulkers, 4.95	14 85
35	lbs. spun oakum, 20c.	7 00
½	bbl. pitch	15 00
1	pitch-mop	1 00
2	days' float-stages	2 00
283	feet oak, stem and outside plank, 9c.	25 47
40	lbs. iron spikes and bolts, 15c.	6 00
12	lbs. copper bolts, 60c.	7 20
	Repairing augurs and tools	2 00
	Cartages	1 50
		147 61

68 EASTERN DISTRICT OF NEW YORK:

UNION FERRY COMPANY OF BROOKLYN
vs.
THE STEAMER "FAVORITA," ETC.

DAVID ROBERTSON, a witness for the claimants, being duly sworn, deposes and says:

I am a seaman, and have followed the water eighteen years. I was on board the "Favorita" at the time of the collision with the Manhasset. I was at the wheel. I had been there the whole trip, except the time I went to dinner. I suppose I went to dinner two hours and a half before the collision. The Favorita was coming round from the North River. The tide was ebb. As we came along up from Governor's Island the river was full of vessels, sailing-vessels, sloops, schooners, and lighters, and occasionally steamers.

Q. As you came along up the river, whereabouts in the river did you come?

A. I suppose we were about four or five hundred feet from the wharf on the Brooklyn side at the time of the collision.

Q. Had you come in a straight course from Governor's Island?

69 A. No, sir; we had to sheer about, sometimes to port and sometimes to starboard, to keep clear of sailing-vessels.

Q. Did you go where you found the course clear for you?
A. Yes.
Q. Who was in the pilot-house with you?
A. The pilot.
Q. Whereabouts was the Favorita when you first saw the Manhasset?
A. We were, I suppose, about four times the length of the vessel from her down the stream.
Q. What was the first you saw?
A. I saw the ferry-boat come out of the slip. That was the first I saw. I saw the smoke-stack moving ahead.
Q. What was done on board the Favorita?
A. The pilot told me to put the helm aport, and I did so. He slowed her down and stopped her, and reversed the engines.
Q. How quick did he give the signals to slow, stop, and back?
A. As quick as he possibly could to give the engineers time to slow her down and stop her altogether.
Q. Were the signals obeyed?
A. Yes, sir.
Q. Was there any signal given from the Manhasset?
A. I did not hear any.
70 Q. Was your pilot-house open so that you could hear?
A. Yes, sir; all the windows & both doors were open.
Q. Was the direction of the "Favorita" changed by your putting your wheel aport?
A. Yes, sir.
Q. How much?
A. I could not tell how much exactly.
Q. What did the Manhasset do?
A. The Manhasset stopped and reversed her engine.
Q. Where was she when she did this?
A. She was nearly right ahead of us.
Q. If she had not stopped, what would have been the result?
A. She would have gone clear of us.
Q. How soon after she stopped was the collision?
A. I suppose it was two or three minutes. I could not tell exactly what time it occupied.
Q. Which vessel stopped her engine first?
A. The Favorita stopped her engine first.

Cross-examined:

Q. How near did you pass to the Battery on coming round from the North River?
A. I should judge nearly a quarter of a mile; we were outside of the shipping which lay off the Battery in the North River.
Q. How high up the North River had you been?
A. Up above the Delaware Iron Works; some two miles above the Battery, I should judge.
Q. Was there much wind at the time?
A. Yes, sir; it blew fresh.
Q. I allude to the time of the collision, and immediately preceding?
A. Yes; it blew fresh all the afternoon.
Q. What was the direction of the wind?
A. From the southward and westward.

Q. At what point on the river did you commence your course along the Brooklyn shore, at the same distance you were when you first saw the Manhasset?

A. I could not tell you; we were sheering about all the time to keep clear of sailing-vessels.

Q. Please state what was the first vessel you had to sheer off for after passing the Battery on your way up the East River?

A. I don't remember what the first vessel was.

Q. Do you remember where—at what point in the river it was?

A. No, sir, I do not.

Q. Do you remember any one instance of your so sheering to avoid any vessel before the collision. If yes, state what and where it was?

72 A. I recollect sheering off to keep clear of several vessels off abreast of Governor's Island.

Q. Do you recollect any instance between that and the place of collision?

A. Yes, sir; I recollect sheering off for several from Governor's Island all the way up.

Q. If you recollect them, then please state what and where they were?

A. Some were sloops and some schooners. I could not tell you where they were; I could not look around to see where they were. I had to keep my eyes ahead all the time.

Q. How could you tell that the Manhasset backed? Did you look at her walking-beam, and see it change its motion?

A. I looked at the beam and the wheels both. She reversed her engines.

Q. As to her wheels, could you see that they were reversed; that is, turning towards the Brooklyn shore?

A. Yes, sir; I could see them from the pilot-house.

Q. What change of movement did you observe in her walking-beam?

A. I did not see anything particular. It goes up and down the same, whichever way she goes.

73 Q. You say you saw her connecting-rod; what did you see in the motion of that indicating that she had reversed?

A. I could see it every time it went over the center. I mean the connecting-rod of the Manhasset.

Q. And did you so see it from where you stood in the pilot-house of the Favorita?

A. Yes, sir.

Q. Are you familiar with the tides, currents and eddys in the East River between the Battery and the foot of 12th st?

A. No, sir.

Q. Who gave you directions as to where to steer, and in moving your wheel?

A. The pilot.

Q. Who were in the pilot-house at any time between your first seeing the ferry-boat and the collision, besides the pilot?

A. I don't recollect any one being there.

Q. What course did you take from the time of the collision to the foot of 12th st.?

A. We steered her straight up as we possibly could, as straight as the river would allow us.

Q. How long were you delayed by the collision?

A. I could not tell how long it detained us.

Q. How far below the ferry-slip were you when you first saw the ferry-boat?

74 A. I should judge we were about three or four times the length of the vessel, as near as I could judge.

Q. How far were you at the same time from the Brooklyn shore?

A. About twice the length of the vessel, I should suppose. The engines of the Favorita worked well that day, so well that they determined not to have another trial trip. She stopped off Staten Island once going down; but I don't know whether it was about the engines or not.

DAVID ROBERTSON.

Sworn to before me May 1st, 1865.

HENRY W. COOPER,
Notary Public.

It is hereby consented that the foregoing deposition be read on the trial of this cause on the part of the claimants, subject to all legal objections, except as to mode of taking, and need not be filed.

May 3d, '65.

B. D. SILLIMAN,
For Claimants.

(Endorsement:) U. S. court, eastern district, The Favorita ads. The Union Ferry Co. Dep. of Robertson. Filed June 26th, 1865.

75 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Be it remembered, that on this first day of May in the year of our Lord one thousand eight hundred and sixty-five, I, Samuel T. Jones, a commissioner, duly appointed by the circuit court of the United States, for the eastern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenie t taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the the courts of the United States," passed March 1st, 1817, and the act, entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at the office, of B. D. Silliman, esq., at No. 43 Wall street, in the city of New York, in the State of New York, James Hall, to testify and the truth to say, on the part and behalf of the claimants in a certain suit or matter of controversy, now depending and undetermined, in the district court of the United States, for the eastern district of New York, wherein the Union Ferry Company of the city of Brooklyn are libellants, against the steamship "Favorita," her engines, etc.; and the Pacific Steam Navigation Company of Liverpool are claimants.

And the said JAMES HALL being about the age of fifty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said James Hall, and he did thereupon depose, testify, and say as follows, viz: I belong in Massachusetts; am master of the steamship "Favorita;" was on board her when she made the engineer's trial trip on Good Friday, the 14th April last. I

was on board at the time of collision with the "Manhasset." I stood when we first saw the vessel on forward part of "Favorita." We had been down the bay, and was bound up to 12th street, where we now lay. We were near the Brooklyn shore—say, from six to eight hundred feet from the ends of piers, more or less; tide was ebb; only a moderate breeze. I should judge we were going through the water from seven to seven and a half miles an hour, more or less. I saw the "Manhasset" coming out of Brooklyn side of Catharine Ferry. When we first saw her moving out of the dock, we were about eight hundred to a thousand feet below her, down the river. She came entirely out of the
76 dock, and got under full headway, and was passing by our bows. The pilot immediately rang the bell to stop the engine when we first saw her come out of the slip, and then rang to back the engine, which was immediately done, at the same time porting the helm for the purpose of passing under the stern of the ferry-boat, which there was plenty of room to do, if she had gone on. When the ferry-boat got directly ahead of us under full headway, instead of keeping her course, as the pilot supposed she would do, she stopped, reversed her engine, and backed back again directly under our bows, which caused the collision, which was unavoidable. It was too late, then, to starboard our helm, and had we done so it would have been no use, because we had nearly lost our steerage-way, being backing. We hit the ferry-boat just forward of her paddle-wheel or box. It knocked our gripe off the stern, and pressed in or cut out two planks from the side of the ship. Mr. Westervelt, the builder of the ship, repaired our ship. This was her first trial. I don't see any possible way of our avoiding the collision after the ferryboat had backed, as we had momentum enough to do the damage, but not enough to enable us to handle the ship quickly.

There were several vessels beating down the bay as we were coming up, and to avoid one of them that was coming over from Brooklyn to New York side we had to go under her stern and thus go near the Brooklyn shore; after this our vessel went right to 12th st. wharf, where we have been lying ever since. I did not go to examine the ferry-boat after the accident, but Westervelt did, of his own motion. No
77 claim was made on me for the damages before the suit was commenced. I have had charge of her since the collision as master, but at the collision she was in charge of the pilot.

Being cross-examined the witness said:

I intend to sail to-morrow morning, if I can get ready; am going to Callao, in Peru. The vessel is to go on the west coast station, as a passenger vessel. She will be permanently engaged on the Pacific coast between her different ports. This was her first trip. We got on speed in the lower bay from 13 to 13¼ knots; no party on board except a few builders, etc.; have been 12 or 14 years engaged in ocean steam-service, and 35 years as ship-master. I was on the spar-deck on a level with the pilot-house. John McGuinn was pilot; think he is the oldest pilotont of N. Y.; a Sandy Hook pilot; a harbor-pilot also. He is not attached to the ship permanently. He was in the pilot-house at the time, and all the way up the river had charge of the bell; quartermaster only was with him; he handles the wheel. I went into the pilot-house when I saw that the collision was to happen. Quartermaster is attached to the ship. His name is David Robertson; at that time he had not signed shipping-articles, but was to go with her. We three, the pilot,
Mr. McGuinn, Robertson, and myself were the only ones in the
78 pilot-house. I couldn't say whether the pilot had his hand on the

wheel; the quartermaster handled and had charge of it. The ship is 205 feet over all, I think. If she wasn't going more than six or seven knots, she could probably be stopped in five or six times her length, more or less, in slack water. I can't say positively, for I haven't got used to her. I am not acquainted with the slips, and can't say what one we were opposite at time we first saw ferry-boat. We backed out of the boat at time of collision, and she backed into her slip, and we went on. There were various vessels about at the time—a number, the same as every day in the year, I think. Our ship is owned by the Pacific Steam Navigation Company of Liverpool. The engineer was from the Allaire Works, and not attached to the ship at this time. All of the engine was in charge of the Allaire Works. Our men had nothing to do with it.

Re-direct examination:

I know that Westervelt went to look at her only because he told me so.

JAMES HALL.

Taken, subscribed, & sworn May 1, 1865, before me.
SAMUEL T. JONES,
U. S. Com'r.

79 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Samuel T. Jones, a commissioner, duly appointed by the circuit court of the United States for the eastern district of New York, in the second circuit, under and by virtue of the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act, in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness, James Hall, is material and necessary in the cause in the caption of the said deposition named, and that he is a seafaring man, and is about to proceed on a voyage to sea, and out of the jurisdiction of the court in which this cause is pending.

I further certify that due notification of the time and place of taking the said deposition was given to the proctor for the libellants in this cause, to be present at the taking of the deposition, and to put interrogatories if he or they might think fit, and that he thereupon signed a consent that the said deposition be taken at his office, in the city of New York, at the time hereinafter stated.

I further certify, that on the first day of May, A. D. 1865, I was attended by Benjamin D. Silliman, esq., proc. for the libell'ts, and by Benedict, Burr & Benedict, esq's, proc's for cla'm'ts, and by the witness, who was of sound mind and lawful age, and the witness was by me carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me first reduced in writing, in the presence of the witness and of the said proctors, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of returning the same with my own hand to the clerk of the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this fifth day of May, in the year of our Lord one thousand eight hundred and sixty-five, and of the Independence of the United States, the eighty-ninth.

SAMUEL T. JONES,
U. S. Commissioner, duly appointed by the Circuit Court of the U. S. for the Eastern District of New-York, in the Second Circuit.

Filed June 26th, 1865.

81 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Be it remembered that, on this first day of May, in the year of our Lord one thousand eight hundred and sixty-five, I, Samuel T. Jones, a commissioner, duly appointed by the circuit court of the United States for the eastern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, did call and cause to be and personally appear before me, at the office of Benjamin D. Silliman, No. 43 Wall street, in the city of New York, in the State aforesaid, Robert Bruce, to testify and the truth to say, on the part and behalf of the respondents, in a certain suit or matter of controversy, now depending and undetermined in the district court of the United States, for the eastern district of New York, wherein The Union Ferry Company, of the city of Brooklyn, are libellants, and The Pacific Steam Navigation Company, as claimants of the steamship "Favorita," her engines, &c., are respondents.

And the said ROBERT BRUCE, being about the age of 28 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Robert Bruce, and he did thereupon depose, testify, and say as follows, viz:

I am mate of the vessel, and am going to sea with her as such; have been attached to her four months. I was on board her, standing in forecastle, at the time of this collision; stood there all the time. I don't know the numbers of the piers. I went the trial trip. Saw the ferry-boat come out. We were six or eight hundred feet from shore then, and a little farther from ferry-boat. When we saw her, we stopped and backed the engine, and had lost considerable headway before the collision; think we were going 7 or 8 knots before we stopped the engine.

82 The ferry-boat was crossing our bows, and when she was about ahead of us, she stopped and backed also. I believe our helm was ported, but couldn't see it, as I was on deck, but I heard the bells to stop and back. I think our ship had began to sheer when we struck the ferry-boat. If the ferry-boat had kept on, there can be no question but that we should have cleared her under her stern; there

was room enough; it was some distance from the Brooklyn shore. Nothing could be done by us to avoid the collision, after the ferry-boat commenced to back; it was unavoidable.

Cross-examined:

This collision was pretty nearly opposite the ferry-slip—if anything a little down the river of the slip. I had been on the forecastle ever since we passed Governors' Island, on the return, and was most of the time before. That is my position as mate. Mr. Westervelt and others were there. I only estimate or conjecture as to the amount of our speed when we first saw the ferry-boat; took no note of it. She was tried between the Narrows and Governors' Island only.

ROBERT BRUCE.

Taken, subscribed, & sworn, May 1st, 1865, before me.

SAMUEL T. JONES,
U. S. Com'r.

83 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Samuel T. Jones, a commissioner, duly appointed by the circuit court of the United States for the eastern district of New York, in the second circuit, under and by virtue of the act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act, in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness, Robert Bruce, is material and necessary in the cause in the caption of the said deposition named, and that he is a sea-faring man, and is about to depart from this district, bound on a voyage to sea.

I further certify that due notification of the time and place of taking the said deposition was given to the proctor for the libellants to be present at the taking of the said deposition and to put interrogatories, if he or they might think fit, and that he thereupon consented that the said deposition be taken at his office at the time hereinafter stated.

I further certify, that on the first day of May, A. D. 1865, I was attended by the proctor for the libellants, the proctors for the claimants, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced in writing in the presence of the witness and of the proctors aforesaid, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of delivering the same with my own hand to the clerk of the court for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the said cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal this fifth day of May, in the year of our Lord one thousand eight hundred and

sixty-five, and of the Independence of the United States the eighty-ninth.

SAMUEL T. JONES,
U. S. Commissioner, duly appointed by the Circuit Court of the U. S. for the Eastern District of New York, in the Second Circuit.

85 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Friday, the sixteenth day of February, in the year of our Lord one thousand eight hundred and sixty-six.

Present, the Honorable Charles L. Benedict, district judge.

THE UNION FERRY COMPANY OF BROOKLYN
vs.
THE STEAMSHIP "FAVORITA," HER ENGINES, etc., The Pacific Steamship Company, claimants.

This cause having been heard on the pleadings and proofs, and due deliberation being had, and it appearing to the court that the collision in the pleadings mentioned was caused by negligence, both on the part of those in charge of and navigating the ferry-boat "Manhasset," referred to in said pleadings, and also on the part of those in charge of, and navigating said steamship "Favorita," at the time of such collision. It is now ordered, adjudged, and decreed, that the damages occasioned by reason of the said collision be apportioned between the libellants, as owners of said ferry-boat "Manhasset," and the claimants, as owners of said steamship "Favorita," and that it be referred to one of the commissioners of this court, to ascertain and compute the amount of such damages, and report thereon to the court, with all convenient speed.

CHA'S L. BENEDICT.

86 (Indorsed:) Vol. No. U. S. district court, for the eastern district of New York. Interlocutory decree and order of reference. B. D. Silliman, proctor for libell'ts. Filed and entered the 16th day of February, 1868. Samuel T. Jones, clerk.

87 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 25th day of April, in the year of our Lord one thousand eight hundred and sixty-eight.

Present, the Honorable Charles L. Benedict, district judge.

THE UNION FERRY COMPANY OF BROOKLYN
vs.
THE "FAVORITA."

On reading and filing the consent hereto annexed, and on motion of B. D. Silliman, proctor and advocate for libellants, it is ordered that the libel in this action be amended nunc pro tunc, as of the 28th of April, 1865, by striking out the words and figures ("$2,000) two thousand," and inserting in lieu thereof the words and figures ("$3,500) thirty-five hundred."

CHA'S L. BENEDICT.

I consent to the entry of the above order.

BENEDICT, TRACY & BENEDICT,
Proctors for Libellants.

88 (Indorsed:) Vol. , No. . U. S. district court for the eastern district of New York. Order. , proctor for .
Filed and entered the 25th day of April, 1868.

89 *Commissioner's report.*

United States district court, eastern district of New York.

THE UNION FERRY COMPANY OF BROOKLYN
vs.
THE STEAMSHIP "FAVORITA," ETC., THE PACIFIC Steamship Company, claimants.

To the Honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York;

In pursuance of a decretal order of reference made and entered in the above-entitled cause, by which it was referred to one of the commissioners of this court to ascertain the amount of damages occasioned by the collision in the pleadings mentioned, and apportion the same between the libellants, as owners of the ferry-boat "Manhasset," and the claimants, as owners of the "Favorita," etc., and report thereon to the court, I, Samuel T. Jones, United States Commissioner, to whom the matter was referred, do respectfully report:

That I have been attended on such reference by the proctors of the respective parties appearing in the cause, and have taken the proofs by them respectively offered, from which I ascertain the damages to be as follows, to wit:

Bill for repairs made by Roosevelt and Griffiths		$448 77
Work and materials furnished by libellants		495 50
Bill of dry-dock		393 55
Cash paid for services of boat to keep "Manhasset" afloat		175 00
Extra labor, etc., on ferry-boat at night, after the collision		91 92
Interest on above items from May 9th, 1865, to date of report, @ 7 p'r c't		557 30
Demurrage, ten days, @ $75		750 00
Permanent damage to ferry-boat		1,000 00
Total damages sustained by libellants, (carried forward)		$3,912 04
90 Total amount of libellant's damage, (bro't forward)		$3,912 04
Bills paid for repairing "Favorita"	$228 34	
Int. from May 9, '65, to date of report, at 7 p'r c't	79 30	
Total amount of claimant's damages		307 64
The damages of the libellants exceed those of the claimant by		$3,604 40

And in order that the damages occasioned by the said collision may be apportioned in accordance with the interlocutory decree herein, the libellants are entitled to recover against the said steamship "Favorita," etc., one thousand eight hundred and two dollars and twenty cents.

I also report herewith the testimony taken before me on such reference.

All of which is respectfully submitted.

Dated Brooklyn, April 25th, 1870.

SAMUEL T. JONES,
U. S. Commissioner.

91 (Endorsed as follows:) U. S. district court, eastern district of New York. The Union Ferry Company of Brooklyn vs. The Steamship Favorita, her tackle, &c. Commissioner's report. Presented to the court and filed. Confirmed nisi four days. April 25th, 1870.

92 U. S. district court, eastern district of New York.

THE UNION FERRY COMPANY OF BROOKLYN *vs.* THE STEAMSHIP FAVORITA. } Reference to ascertain and report damages.

April 22d, 1867.—Pursuant to adjournment, the hearing is proceeded with before S. T. Jones, U. S. com'r; Mr. Silliman for libellants, Mr. Benedict for respondents.

Evidence for libellants.

Mr. Silliman reads interlocutory decree of Feb. 16th, 1866; also libel claiming damages for collision of February 14th, 1865.

GEORGE W. WRIGHT sworn and examined for libell'ts:

In 1865 I was carpenter of libellants—head carpenter. I remember collision in question. I examined the ferry-boat about 15 or 20 minutes after the collision. Her frames were broken, guard, side-house to cabin, deck and planking, etc., and she was leaking badly. I did the repairs on her. Commenced, I think, the next day. She was taken from Catharine Ferry to dry-dock, New York. I had the repairs done there. I can't state all the repairs. There is a bill for it somewhere. I
93 examined her after these repairs were made at that place. Ex. A contains a correct statement of same. They were done under my supervision, and were necessary in repairing damages occasioned by this collision. Ex. A. read in evidence. The prices charged in Ex. A are correct, and proper charges for the repairs. I certified the bill at the time. It amounts to $448.77. After this was done the boat was taken to libellant's yard at South Ferry, to the repair-shops. The work done at sectional-dock did not complete the repairs. Other work was necessary—joiner's work, and wood-work, and all other work that could be done above water was necessary. Her hull only was repaired at the dry-dock. The work done at repair-shops of libellants was done by me, or under my direction. The paper now produced shows this work at company's shop; also the prices charged therefor. This work was necessary to repair the damages caused by this collision. The charges in this bill are rather under the usual prices charged for similar work at that time. They are just and fair for work and material specified. Paper read in evidence, and marked Exh. B. The charges as to time are correct. I know of the condition of this boat before collision, so that I can
94 judge of her relative value after the repairs.

I don't think she was as good a boat after the entire repairs were made as she was before the collision. I think I looked at the boat at that time, and thought this matter over, and I then estimated this permanent damage after the repairs, at $1,000.

Cross-examination:

I am still in libellants' employ, and have been for 15 years. Boat was at foot of Main st., Brooklyn, when I first saw her after this collision. The three bills attached to Exh. A are for the last three items of Exh. A. I know nothing of the payment of Exh. A. I got the account of time in Exh. A from foreman. I was about at the time work was being done. My foreman was then superintending work. I knew the number of days she was at dry-dock at the time, but don't remember now. The collision was on Friday; she was taken to the dock the next day. Can't give day she was taken to South Ferry yard.

I kept the time charged in Ex. B. Don't now remember the number of men we then had on this job.

The charge for labor in Exh. B, is just what the men got at that time; they got from $2.25 to $4.00. Whatever a man's wages was, I
95 charged it. The men were paid by Mr. Mead, a clerk of the company. There was a difference between wages of ship-carpenters and joiners of about 25 c'ts per day, I think. Think joiners get the most. We have regular prices for our men. We pay a man what he is worth. I do not recollect the number of days of the ship-carpenters. I don't know how lately before the collision boat had been repaired; it might have been a week. They came down most every week to have something done to them. No other repairs were done at that time than for repairs made necessary by collision, and none others are charged in Ex. B.

I was not in the habit of buying and selling such vessels as this at that time, and had never bought any. The company own this boat still. She has done her work right along from that time to this. You could see marks of this collision now if you examined boat closely; could see where timbers, planking, &c., had been pieced. I suppose I could get at what the boat was worth before collision, pretty near; I could judge as to wood-work. I suppose I could tell within a few thousand dollars.

Redirect:

By saying I could get at what the boat was worth pretty near,
96 I mean by taking time to think it over, and figure on it.

In saying boat was worth $1,000 less after repairs, that related to the entire boat. I have been a shipwright about 16 years. I estimated the damages at $1,000 at the time, and I now believe that that estimate was correct.

Recross-examined:

I think I thought this permanent damage matter over once or twice since the time when repairs were first completed, that I talked it over with Mr. Martin. My present estimate is based on the estimate I made then, and that is all it is based on.

Redirect:

My estimate now is based on the estimate made at time of doing the work, and when I talked it over afterwards.

Recross-examined:

What I talked over was the estimate I made at the time the repairs were made. Exh. B has my estimate in it.

WILLIAM H. MARTIN, sworn and examined for libellants:

I was chief-engineer for libellants at time of collision, and have been ever since. I recollect the collision. Saw Manhasset about ¾ of an hour after collision in the slip at Catharine Ferry, Brooklyn. I had charge of docking the boat. Made arrangements to have her ta-
97 ken on the dock. The boat was injured on her side; the guard was completely cut in, making a complete imprint of the bow of the Favorita. Engineers and fireman were engaged all night on the Manhasset. Two engineers, I believe, and two or three firemen. The paper I have was made at about the time by me, and shows amount of cost to the company for this item.

This cost was as follows, viz:

The cost for help that night was				$28 61
"	"	"	engineers and firemen	22 31
"	"	"	oil for lamps	3 00
"	"	"	carting coal on boat to careen her, and prevent her sinking	10 00
"	"	"	4 tuns of coal used, @ $7	28 00
Amounting in all to				$91 92

From time of injury to completion of repairs was, I think, about ten days—9 or 10 days.

Cross-examination:

The engineers and firemen were day men of the company, employed at the repair shop. There were more engineers and firemen employed than there would have been but for collision. There were three engineers there; one only when boat is running; two additional engineers there all that night, not including myself. Two additional firemen.
Don't think there were any additional deck-hands. We always
98 have two on a boat. I think the two additional engineers and two additional firemen were all the extra help we had. Time counts double at night. These two additional firemen and two additional engineers were paid, I can't state exactly what part of this $22.31.

I can't tell what day the Manhasset went to work again without referring to something. I can't state the day when the boat commenced running again. I can't state positively the date when repairs were completed.

Redirect:

The firemen, engineers, men, etc., employed on the boat that night were necessary; the amount of charges I have specified are charges the company would not have had to pay but for this accident. It is all for overtime, night-work, for which they always receive extra pay, and are allowed double time.

Q. Did you know at any time what was the number of days that the boat was undergoing repairs, and the company thereby deprived of the use of her, commencing with the time of the accident?

(Objected to.)

A. I did at the time.

Q. Did you make any memorandum in writing at the time by
99 reference to which you can refresh your memory, and now state the number of days?

(Obj'd to; allowed.)

A. I did. I now refer to memorandums and state that ten days is the time lost; this memorandum was true at the time.

Recross-examination:

The memorandum don't give the date when the repairs were finished. I can't now tell the date when the repairs were completed, nor the hour of the day. I was aboard the boat the day the repairs were finished—I had charge of engine-work. I had charge of engine-work at that time.

Q. Did not you say just now that this boat was ready when the engineer got his packing done?

A. I did.

Redirect:

Q. Was not such remark part of an extended reply to a complicated question or questions put to you?

A. It was, of course.

Adjourned to April 25th, at 9½ a. m.

APRIL 25th, 1868.—Hearing resumed. Parties and counsel present:

CYRUS P. SMITH sworn and examined:

100 I was, at the time of collision, and am still, managing director of libellants. As to the bill Ex. A, I know from an examination of libellants' books, checks, etc., that it was paid May 9th, 1865.

The bill now produced, marked Exh. C, was paid by the libellants in May, 1865, as early as May 9th; it amounts to $393.55; it is for putting the ferry-boat on the dock for repairs.

Expense was incurred by the co. in keeping the boat afloat; we employed the boat owned by the Jewetts, and they charged us $300.00, which we refused to pay, as being an excessive charge. They sued us, and we defended suit; they recovered judgment for..... $175 00

Costs 126 00

We paid counsel fee of..... 50 00

making whole amount paid by libel'ts..... $351 00

The date of payment is March 22d, 1866. It was necessary to have the services of this boat, or the ferry-boat would have gone down, as her own pump was insufficient to keep her afloat.

Q. What were the earnings of that boat per day through the month of April, 1865?

A. They would average $121.25. (The foregoing answer taken subject to objection.) Her gross receipts would have amounted to

101 this. The entire expense of running the boat would not have exceeded at that time per day $40.75; so far as I have ever known $75 per day has been the uniform price for boats of this kind, and I think that would be a fair allowance per day for demurrage in this case. I have known, I should think, of half a dozen cases of hiring boats in five years, and this has been the uniform price in those cases for use of boat alone.

Cross-examination:

The check for Exh. A was payable to bearer, as all of our checks are. In making expenses of boat $40.75 per day, I included charge for two pilots, two engineers, two firemen, and four deck-hands, and coal; two boats were running on that ferry at that time, and the running of the ferry includes expense for ferrymasters, bridge-tenders, etc., but I have only included the men employed on the boat, and the fuel. Two ferrymasters and two gate-keepers would be $19 per day as expense of ferry for these items. It is not absolutely necessary, but advisable, to keep a

spare boat; we do keep three spare boats for the five ferries. I think there should be spare boats in order to manage and run a ferry properly; some ferries do not keep spare boats.

102 It is impossible to tell the average cost of keeping such a boat in repair; this boat is of less value than some of our boats. We run five ferries, and value our boats every year; this boat was valued at $28,000 in November, 1864, and in Nov., 1865, at $26,000. In 1863 she was valued at $29,000; our other ferry-boats, in 1865, were valued at from $25,000 to $70,000.

I got at the average gross receipts of the boat by taking the highest and the lowest receipts of any day in the month, and dividing the gross amount by two.

Being averaged through the whole month, the average gross receipts of one boat per day on this ferry would be $123.45. These receipts were not affected by the collision, because we put another boat right on in place of this—one of our spare boats. We always keep one boat in order, so as to put her on on five minutes' notice. I don't know whether there was other call for a spare boat at this time.

Redirect:

The libellants run five ferries. Its spare boats are kept generally for the use of these five ferries. The spare boats are earning nothing, except when put on a ferry in place of another boat.

Adjourned to April 30th, at 9½ a. m.

103 APRIL 9TH, 1869.—Hearing continued.

Evidence for respondent.

DANIEL D. WESTERVELT, sworn and examined, says:

I am ship-builder, and was in 1865. I knew the steamship "Favorita," and was aboard of her at the time of the collision in this case.

Q. What injury was caused to her by the collision?

A. A portion of the planking was broken, and badly scratched, necessitating its removal; also, a portion of the stem, some iron-stanchions on the forecastle-deck. Nearly all, in fact, were bent, and required to be unshipped, and straightened again. Some may have been broken. That is all that I remember. I might state that the new plank we put in had to be recaulked, of course. I repaired those damages. I don't recollect the amount of the bill. I think it was about $157. I made out a bill for it, and gave it to Mr. West at the time. It was a reasonable and fair bill, at current prices paid for labor at that time. The heading of the bill shows the character of the work done. The vessel was new. These repairs were all rendered necessary by the collision, and were conduct-

104 ed as rapidly as possible. The bending of the stanchions was caused by the weight of the hurricane-deck of the ferry-boat. That was just such h'ight that the bow of our vessel ran under the deck of the ferry-boat some sixteen or eighteen feet.

Cross-examined:

Don't remember date of collision. Repairs of which I have spoken were done at the Morgan Iron-Works' dock, foot of 8th st. It is a public open wharf. She started from that place when she went on her trial trip. I remained on board after the accident until she reached the foot of 8th st. I then went on shore immediately. Went on board her fol-

lowing morning. I personally examined the injury done, and have knowledge, personally, as to the injury done, and I directed all the repairs. The bill I have not looked at since it was rendered. It has been paid. I can't state the date it was paid. It was paid within a few days after date of bill. The work was done a short time previous to date of bill. Don't know how many men were employed in doing the work. The charge of 13¼ days' work means the work of the carpenters. I can't speak accurately, but I should not say there were over five carpenters employed on it. There were, I can't say how many, caulkers
105 employed. I can't recollect; it is a long time ago. I have no knowledge or recollection, and can't speak with certainty, and only know from looking at the bill. The bill is in the hand of my book-keeper. The items were taken from the books kept in the office. The entries in the books were entered by the book-keeper. The items are furnished to the book-keeper by the foreman, who was on the work while it was progressing, and all the time, in fact. I have no other knowledge as to these items than as they are found on the books. I can only have a general idea of the work, it is so long since it was done. Can't tell the number of float-stages used on the work. I do not know the number of days during which this work was actually being performed.

Redirect:

There was joiner-work done on those repairs by Mr. Vanderveer. It was under my supervision, so that I knew what was done at the time. Don't remember tonage of "Favorita"—about 1,000 tons. I supervised the repairs, and was present all the time they were made; selected the materials therefor, and directed how they should be done. Did not see the bill, as it was made out, at the time. Did not know what
106 the amount of the bill was. Mr. Joseph Start was, and is, my foreman. The items in the bill, and in all other bills that leave my office, are correct. Items of such work as that stated in the bill were necessary for those repairs.

Cross-examination resumed:

No other work was done in my department while these repairs were going on. I don't know what work might have been going on in other departments. Don't know about any work except in my department. Went on board her after the repairs mentioned in this bill were finished. It was my habit to go on board every day, of vessels that I built or repaired. Can't recollect how long or how often after these repairs I went on board her.

Re-direct:

Bill marked B. D. 1, is the bill I have referred to.

DANIEL D. WESTERVELT.

107 APRIL 30TH, 1869.

CHRISTIAN B. VANDEVEER, sworn and examined for claimant:

Ship-joiner. I was such in April, 1865. Recollect the steamship "Favorita." I furnished the vessel when she was built. I recollect repairing injuries occasioned by the collision in question. I have a duplicate of bill therefor. The charges for the work are the usual prices. Nothing in bill except what was made necessary by collision. This bill was paid.

(Bill read and marked Exh' .)

Cross-examined:

I presume the work was done at date of bill. The work was done on the bow of the vessel; bow-railing and netting were carried away. I don't recollect how the vessel lay at time of repairs. Don't remember whether she lay at Westervelt's yard or at the engine-works. These two places are about half a mile apart. I was personally on the vessel perhaps twice or three times a day, half an hour or an hour at a time, while these repairs were being made. The work was done immediately after the damage. I had men at work furnishing up the vessel at same time. I had other men at work on other parts of vessel at time of these repairs in finishing up my contract. Can't, without my
108 books, say when the original contract was finally finished up. I presume it was perhaps a week or a few days after these repairs were made that men got through with the original contract work. Capt. Hall commanded this vessel on her voyage. I presume I was aboard the vessel every few days after she was completed, and until she went to sea. I recollect that I was. I can't say how long the vessel was in port after these repairs were finished. It might have been a week, or a month. I probably had men aboard at work finishing up little jobs or extra work on the vessel until she finally sailed. There was a good deal of extra work on the vessel in addition to the contract; I mean other work than these repairs. My contract work was going on at same time with these repairs. I don't know what cargo this vessel took out. These repairs were outside on the bows of the vessel. She sailed for some place in South America.

Re-direct:

I was present on the trial-trip. I didn't see the collision, but I was on board and saw the injuries at the time. The vessel went right to wharf, and these repairs were made right away. I am not positive that the repairs were made at about the date of the bill. I don't know whether my books will show the day my men left the vessel or not. I can't tell the exact day when my men left the vessel. I never
109 saw her after she first went to sea. I can't specify any particular work aside from these repairs that I was doing at the same time on the vessel. I had men on her till she went to sea. My contract was not done before these repairs were made. I am positive it was not. I can't specify any work done on contract after this collision.

Re-cross-examination:

I could not have stated the repairs made except from finding the same on my book. I saw the repairs made similar to those charged.

T. D. VANDERVEER.

Adjourned to May 4, 1869, at 4 p. m.

MAY 4, 1869.—Hearing resumed. Adj'd to May 15, 1869, at 10.

MAY 15, 1869.—Adj'd to May 17, 1869, at 10 a. m.

CYRUS P. SMITH, recalled for libellants and examined:

Q. What would have been done with the Manhasset by libell'ts but for the injuries occasioned by this collision?

(Obj'd to; allowed.)

A. She would have been kept running on the Catharine ferry; probably she was then in service at the time. It would have been in the ordinary course of business of the company to have kept her run-
110 ning there during the period occupied in these repairs, unless she

had met with an accident from some other source, or given out in her machinery. I have no reason to suppose she would have met with some accident, or given out.

Cross-examined:

I have given the judgment I now have about this matter. I have no recollection as to the intention of the company to use this particular boat at that time, except my recollection of the course of business for the last twenty years. In that course of business this boat is sometimes taken off for cleaning. All boats have to come off once in four or five weeks to clean the flues. I recollect no other reason for taking this one off. We do not take them off from our ferry and send them to another. The change is made from the depot when they are so changed. Don't know when the flues of the Manhasset were last cleaned prior to this collision. We have relief-boats, but no spare boats; no particular boats set apart for that purpose. The relief-boats are the ones not in actual use at the time.

Testimony closed.

Adjourned to May 19, 1869, at 10.

Summed up and submitted June 8, 1869.

111 Further hearing ordered on question of permanent damage to boat.

JUNE 17, 1869.—Hearing fixed for June, 1869, at—

JULY 15.—Hearing fixed for July 16, at 10 a. m.

JULY 15, 1869.—Hearing resumed on the question of permanent damage to boat.

CYRUS P. SMITH, recalled and examined on behalf of libellants:

I am acquainted with permanent value of ferry-boats, and have been familiar with building and repairing of same for about fourteen years, almost exclusively. I am in the habit of valuing boats. We do that every year. Immediately prior to the collision this "Manhasset" was worth, and could have been sold for, $35,000.

Cross-examination:

I don't know as I can tell the date of collision. I fix' value of boat immediately previous to collision, but can't say what time that was. The value of that boat, and of that class of boats, ranged about the same for three or four years. Of course they lessened a little every year. I value boats for the ferry company. I don't know that I valued this boat about that time. I don't know that I have now any better knowledge as to the value of this boat than I had then.

Re-direct:

112 In April, 1865, she was worth $35,000. We could have sold her for that.

Q. Did you sell any other boat at or about that time?

(Objected to; question waived.)

Q. In the annual inventories and valuations of the boats by the company, are those valuations placed at what they would sell for, or at a lower valuation?

(Obj'd to; ruled out; libel't excepts.)

Q. Will you explain why she was valued at $28,000 in Nov., 1864, and at $26,000 in Nov., 1865, as you have testified, if her actual value, the price at which she would have sold just previous to the collision, was $35,000, as you now say?

A. The price which I named of $28,000 and $26,000 was the price at which she stood on the annual inventory. The inventory is no actual criterion of the value—am't made for that purpose. It is made in that form for the purpose of determining the annual deterioration, by time and use, from cost. A boat, for instance, that cost, at the time she was built, $45,000, formerly seven per cent. was deducted every year from her cost; latterly we deduct 12 per cent; but of all the boats we have sold, the inventory-price is no certain criterion of the price for which she could be sold, nor of what she was worth in the market.

Re-cross-examination:

I presume the inventories for those years are now in existence;
113 they are embraced in our annual reports.

Cross-examination suspended.

Adjourned, day to be fixed hereafter.

JANUARY 18TH, 1870.—Hearing continued.

ECKFORD WEBB, called by the libellants, being sworn and examined, says:

I have been ship-builder in N. Y. for 28 years. I know the Manhasset. I have examined her with reference to injuries and repairs sustained by reason of a collision. I made the first examination some time in May or June, 1869, a year ago, I think. I repeated that examination once or twice, I think yesterday for the last time. The first time, I think, Luther Smith pointed out the damage and repairs; also, one of the deck-hands on boat at time of this collision, and the engineer, I think, were along. The second time I went, my partner, Mr. Bell, went with me. He went with me to look at it. The engineer pointed out the injuries and repairs this second time. The places could be readily seen where repairs were made. Those repairs, I thought, were as economically done as they could have been, with due regard to the necessities of the case.

114 Q. After these repairs were made, was the vessel worth as much as she would have been but for the injuries requiring such repairs?

(Objected to on the ground that witness made examination long after the occurrence, and it does not appear what repairs and what injuries he saw; also, that it appears by the testimony that the vessel was valued by the claimants themselves, both before and after the collision, and that that is the best evidence on the point. Taken, subject to objection.)

A. No, sir; I don't think she was. In the first place, it is always an objection to the value of a vessel to be injured, in case they are wanted to be sold. It is the first thing a purchaser always looks upon. Now, secondly, I will say because they are not usually as well repaired as they are built in the first instance.

Q. If the injuries requiring the repairs were caused by a collision, what would be the condition of the vessel as to general strength and soundness after such repairs, compared with what it was before the injuries were received?

(Objected to; taken, subject to objection.)

A. It would depend upon the vessel which sustained the collision, from the injury and strain. I think a vessel can be made just as strong after a collision as before.

115 Q. Was this vessel as strong, in your judgment, and sound

after these repairs were made as before the injury requiring such repairs?

(Objected to, it not appearing that witness ever saw boat before the injury.)

A. I do not think she was; the reason why was because her butts were not distributed throughout the vessel as well as they *was* previous to the damage, they making one more butt in every streak of plank; and in some cases there were two butts more.

Q. Was the vessel, by reason of the facts you state, stronger or weaker than before?

(Same objection; already answered.)

Q. Of how much less value was the vessel, in your judgment, by reason of her deteriorated condition after such repairs, in consequence of the injuries requiring such repairs, than before such injuries?

(Objected to; disallowed; exception by proc. for libellants.)

Q. What, in your judgment, was the vessel worth before those injuries, judging from the appearance of the vessel, with such repairs and injuries as you state that you saw and as you have mentioned?

(Obj'd to on the ground that witness is not shown to have any knowledge of what the vessel was before the injury, and that the appearance of the vessel afterwards furnishes no evidence as to what she was before. Allowed; exception.)

116 A. I judge that the vessel, before the injury, was worth from $30,000 to $33,000. I am able to state this because I examined her with reference to a previous injury just before the collision. I am familiar with the structure of ferry-boats, their character and value; have built some forty ferry-boats—some twenty for this company.

Q. Of how much less value was the Manhasset, by reason of this collision, and after such repairs, than before such collision?

(Obj'd to; allowed; exception.)

A. Two thousand dollars.

Q. If the vessel, before the collision, had been worth but $25,000, how much, in your judgment, less value would she have been after such repairs than before such collision?

(Objected to; disallowed; exception.)

Q. State what injuries and repairs you saw on this examination.

A. I couldn't say that I saw the injury, but I could say this: I saw her after the injuries had been repaired. I saw that there had been three of her frames injured that required repairing. The repairing was done by placing new timbers alongside of the old frames; that there had been—her bell-streaks had been replaced by being taken away, and replaced to put in new timbers, new clamps. How much of the

117 bell-streaks had been injured I couldn't say. It was necessary to take away more of them, and of clamps than had been injured, in order to get a proper shift of butts. Had they taken out the amount of plank necessary to make it as good as it was before, it would at least cost five times the amount it did cost. Now, on the outside of the hull, her strings, waist, and wales, and a portion of the plank below the wales, had to be taken off and replaced; and for the same reason there had to be more taken off than was injured, in order to get a proper shift of butts. There were some four or five new knees under the guards on the outside. The beams were broken, and repaired by having new pieces put alongside. Her plank-sheer, facing, lining, and fender had been replaced. Her deck-plank on the guards had been repaired when the damage was by taking up, for the same cause as above stated, and all this required new fastenings, caulking, etc., and her joiner-work had to be repaired. This

embraces generally the repairs I saw without going into the specific items. The repairs of which I have spoken relate to the wood-work exclusively. I made a general survey of the engine and machinery. I didn't see any injury myself to the machinery. I am very particularly acquainted with the value of vessels of this class.

118 Cross-examined:

I am not acquainted with this co., except to build vessels for them. I made the examination before collision in the winter, I think of 1865. I don't know when this collision occurred. The previous examination, I think, was for the Chesapeake collision. I examined all the boats of the ferry co. for them in relation to their soundness in 1863 or 1864, I think. I have not here any mem. by which I can fix the date. This previous examination I made alone. The injuries on this other occasion were on the other side of the boat. I don't think the specific repairs were pointed out to me, only the place where the collision occurred. The repairs were plainly to be seen, as plain as the nose on a man's face. I could tell as to the knees, whether they were new or old; its just like a man wearing a new or old suit of clothes. The plank had to be shifted that were on the butts, and the knees had to be taken off. The outside work was painted, not the inside. I could tell where the butts had been shifted. Won't say as to every one, but I could tell generally, because there might have happened to be a butt there before, but not just where every one was. I should think I was able to state the value of
119 the Manhasset in the summer of 1865. I consider her valuation at that time from $30,000 to $33,000. I was examined in the Chesapeake case. When I examined her as to the previous collision, I gave her a pretty thorough examination. I remember now that my foreman went with me at the time. I fix this sum at $2,000 rather than $1,500, or any other sum, because, as I was remarking the value of her was $30,000 to $33,000, and receiving such a collision, had it been thoroughly repaired to make her just as good as she was before, would have cost from $5,000 to $6,000, including the dockage and such like, painting, &c., and everything, and I think what repairs they did, cost not more than $2,500 to $3,000, to cover everything, exclusive of any repairs which may have been made to the machinery. In other words, as it would cost, say $5,000 or $6,000 to make her as good as before, and instead of that she was repaired for $2,500 to $3,000, I would fix the depreciation at the difference, say $2,000.

Q. Your estimate, then, is based on an injury to the boat which would cost $2,500 to $3,000 to repair as that was repaired, is it not?

A. It is.

120 Redirect:

Q. Did any permanent injury remain—such as general strain of the vessel, or weakened condition from a severe collision—which could not be mended or reached by such repairs as were made to this vessel?

A. I think so.

Q. In case of severe collisions does there not, as a general rule, result a strained and weakened condition of the vessel which cannot be reached by repairs of the wounded part?

(Objected to; ruled out; exception.)

Recross:

I saw no indication of strain to this vessel, except when this collision occurred, at the time when I examined her. In my judgment there must have been a strain to this vessel from this collision; it could not

possibly have been otherwise but that she must have been strained by such a collision in the butts and other parts of the vessel.

Q. Then that strain had been repaired before you examined the vessel, had it not?

A. So far as it could be done by such repairs as she had.

Redirect:

Q. Did the repairs that were made, in your judgment, fully repair that strain?

A. I don't think it did.

121 Adjourned to January 26th, at 3 p. m.

JANUARY 26TH, 1870.

MARCH 21ST, 1870.—Hearing continued. Counsel on both sides present.

GEORGE ST. ROOSEVELT, sworn and examined for the libell'ts:

I am shipwright, caulker, sparmaker, &c. My firm has been in business for some 19 years last past. I was in same business since 1841. I know the Manhasset. I have examined her with reference to injuries and repairs growing out of this collision. I made that examination at time of collision and since. We had her on our dock at time, and repaired her. All the folks of the co. were there. Luther Smith and Martin were there with others. We made the repairs, so far as they were made on the dock. I recollect that quite a number of timbers, deck, outside plank, beams, ceiling, clamps, knees, were repaired. The repairs were made with as little expense as possible. After those repairs were made the vessel was not worth as much as she would have been but for the injuries requiring those repairs.

122 Q. Can you judge how much her value was depreciated—that is, how much less was her value after the repairs by reason of the collision than before the collision?

(Objected to on the ground that libellants should prove value before and value after. Witness allowed to answer "yes" or "no" to this question.)

A. Yes, sir; I can. I can judge pretty near it.

Q. How much less was it?

(Objected to. Claimants insist that lib'l'ts should prove value before collision and value after repairs. Objection sustained. Libel't excepts.)

A. I knew the vessel simply as a ferry-boat before this collision.

Q. If her value before the collision was $26,000, how much less was she worth after the collision and repairs?

(Obj'd to on same ground; same ruling, and libellants except.)

(The libellants offer to prove that if this vessel up to and at time of collision was worth at least $26,000, her permanent depreciation by reason of the collision, and after such repairs, was at least such sum as the witness shall name, and they offer to prove that her value at the time of the collision was at least $26,000.

123 The offer is not objected to by counsel for claimants, but the manner of proving it.

Commissioner directs counsel for libellants to put questions.

Last question repeated.

Objected to; objection sustained and the libellants except.)

Before the repairs were made, I made an estimate of what she was worth before the collision. I thought her value was about $30,000, and

so placed it on my memorandum-book at the time. After the repairs were made, she was worth, I think, about $28,000; don't think the depreciation was far from that. Making the repairs involved splicing the timber, plank, ceiling, clamps, &c., and also replacing timbers that were broken. She could not be so strong after as before collision, because of this splicing of planks, timbers, &c. She was not so strong after repairs as before the collision. I have worked a great deal on ferry-boats, in building and repairing them for a great many years.

Cross-examined:

I made a memorandum at time, but haven't it here. I have copy-extract from book in which original memorandum was made. Aside
124 from the memorandum which I made, I shouldn't retain the particular circumstance as to the value of the vessel, because when I make a memorandum I don't charge my mind with the matter.

Q. Are you able, then, to speak of particulars with relation to the value which are not embraced in the memorandum which you made?

A. I remember very well repairing her. I remember that I valued her at $30,000, and so placed it on my memorandum at that time. I think I could say no to your question, but still there are reasons why I should remember it. I now recollect the facts, but I couldn't give you the precise reasons why I fixed on $30,000 at the time as the value of the vessel. I find nothing in this memorandum as to when the $30,000 valuation was fixed, whether before or after the collision. I presume the original memorandum shows date at which appraisal was made. I put down $30,000 as her value prior to collision. I remember that now. I considered her worth $2,000 less than that after the repairs were made. Probably nobody would want me to put a valuation after collision, since I had fixed on her permanent damage. I think
125 we had repaired her shortly before that, but only for natural wear and tear, and not for collision. I examined the vessel in her injured state, and estimated what she was worth prior to the collision, and then estimated how much less she was worth after the repairs. I give $2,000 as depreciation, because it would cost a good deal more than that extra to have put her in as good condition as she was before collision. We made a good, fair job of these repairs. The vessel holds herself very good yet. We have repaired her a number of times since. Every boat is repaired every year, and this has been repaired the same as the others, from year to year. The work we put in would be as lasting as the other part of the boat, but whether it would stay there as well is another question. In estimating $28,000 as value after repairs, I take $30,000 as value before collision, and fix upon this deduction, assuming that she was weaker and strained by that amount. I can't say this ferry-boat would last a week after the repairs. It would depend
126 upon what happened. She would not be so strong as before collision, and not likely to hold together so long. I think we repaired her last summer. I examined this place about a month ago; saw a good deal of shrinkage then about repairs, but it still stays. You might put your fingers in where it has shrunk.

Redirect examination:

Ex. A. is the bill for repairs made by us for injuries caused by this collision at that time on the dock. I survey great numbers of vessels during the year. As a general thing, I make memorandums of surveys.

CYRUS P. SMITH, cross-examination resumed:

I now produce the annual report of the directors of the Union Ferry

Co., at the request of claimant's counsel, dated Nov. 14th, 1864, purporting to be made in pursuance of act of legislature of April 9th, 1853, and showing, among other things, the property and effects of the company on hand, in which is stated the steamboat "Manhasset, $28,000," with an affidavit attached, of a majority of the directors, including myself, stating that the facts contained in the annexed report are
127 true to the knowledge and belief of deponents; also, similar report, similarly verified, dated November, 1865, in the which is stated among the assets:

"Manhasset, $26,000."

I have the report of 1866, and now produce it.

(Claimants offer to read so much of report in evidence as gives the value of all the boats of the ferry co., in 1866, in a sum in gross, to prove what was the value of the Manhasset, as estimated, and included in this report.

Obj'd to by libel'ts on the ground that the value at the time of the collision and repairs is not affected by the value of the boat in a subsequent year.

Objected to, ruled out, and cl'ts except.)

Q. At what amount was the Manhasset valued when the annual report of the co. was made up in 1866?

(Obj'd to; ruled out; cl'mts except.)

Q. Mr. Smith, how many collisions has the Manhasset ever had?

A. I can't tell. Nobody connected with our establishment could tell more than I can.

Q. Has she ever had to go on the dock by reason of a collision
128 except on this occasion?

A. Yes, she has. I can't tell when, nor how many times. She was seriously damaged by another collision than this one. I think once, and perhaps more than once, she was so damaged by collision that the repairs cost as much or more than this. I think the Chesapeake was one, but can't tell extent of damage or cost of repairs then. I don't recall any other instance when the damage was as great.

(Counsel for claimant offers to prove that the libellants valued the Manhasset in 1861 at $35,000, in 1862 at $32,500, 1863 @ $30,200, and in 1866 @ $24,000. Objected to by libellants. Ruled out for the present, no foundation for this testimony having been laid. Cl'm'ts. except.)

Q. You have heretofore (as appears from the minutes) stated that the Manhassett, in 1863, was valued at $29,000. Have you here the estimate or valuation which was made in 1863, of which you spoke?

(Objected to as irrelevant and immaterial. Ruled out, but the commissioner decides that witness may be asked whether his testimony on that point, as shown by the minutes, is true.)

129 A. I have the report made by the board of the inventory of the property in 1863, but not of its value.

Q. Was this the paper of which you spoke when you said that the boat was valued at $29,000 in 1863?

(Obj'd to. Disallowed, on the ground that it does not appear that the witness spoke of a paper.)

Q. When you said that this vessel was valued at $28,000 in November, 1864, did you not speak of the amount stated in the annual report of the Union Ferry Co.?

(Objected to. Allowed. Exception.)

A. I don't remember whether I made that statement from the report or my memory. Undoubtedly I meant to state the amount as it was stated in the report.

(The witness desires to have the minutes corrected in this, that he never intended to say that the inventoried price of the Manhasset was $29,000 in 1863, as the minutes show him to have stated.)

I can't state whether I stated that as the value of the boat, or the inventory, for I don't know to which I was referring at the time, and I didn't state $29,000 in either case.

130 Q. When you stated that the boat was valued at $26,000 in Nov., 1865, did you not refer to the amount stated in the annual report of the co. for that year?

(Obj'd to. Allowed. Exception.)

A. To the amount stated in the report, which was not the value.

Q. Can you give any reason why, having stated the amount stated in the report for 1864 and 1865, you stated any different amount from that stated in the report of 1863?

(Obj'd to. Allowed. Exception.)

A. I didn't state any different amount. If I was questioned as to the inventoried value of the boat for 1863, I must have said, and did say, $30,200, and did not say $29,000.

Redirect:

Q. You make a distinction between the actual value of the boat, and the inventoried value of the boat, as contained in the report. What do you mean by this distinction?

(Obj'd to. Taken subject to objection.)

A. By the inventory I mean the price set out in the annual reports but the inventoried price is no criterion of the value of the boats. The boats are worth more than they are inventoried at.

131 MARCH 21ST, 1870.—Testimony closed. Cause to be summed up on day to be agreed on by counsel.

APRIL 22D, 1870.—Cause summed up and submitted.

APRIL 25TH, 1870.—Report made with this test mony.

S. T. JONES, *U. S. Com'r.*

132 U. S. district court.

THE UNION FERRY CO.
vs.
THE STEAMSHIP "FAVORITA."

The libellants except to the report of the commissioner herein—

First. Because he has allowed only $1,000 for permanent injury to the "Manhasset," whereas he should have allowed $2,000.

Second. That he has allowed but $175 for charges and services and expenses incident thereto, of boat to keep the "Manhasset" afloat, whereas he should have allowed $300.00.

D. B. SILLIMAN,
For Libellants.

(Endorsement:) U. S. district court E. D. N. Y. The Union Ferry Company of Brooklyn vs. The steamship "Favorita," her tackle, etc. Exceptions by libellants to com'r's report. B. D. Silliman, proctor of libellants.

133 U. S. district court.

THE UNION FERRY CO.
vs.
THE STEAMSHIP "FAVORITA," ETC.

The claimants except to the report of the commissioner herein:
First. Because he has allowed $750.00 damage of said boat.
Second. Because he has allowed $1,000.00 for permanent damage thereto.

BENEDICT, TRACY & BENEDICT,
Claim'ts' Proctors.

(Endorsement:) U. S. district court. The Union Ferry Co. vs. The Steamship "Favorita," etc. Exceptions to report. Benedict, Tracy & Benedict, cla'm'ts' proctors. Filed April 25th, 1870.

134 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on Tuesday, the third day of May, in the year of our Lord one thousand eight hundred and seventy:

Present, the honorable Charles L. Benedict, district judge.

THE UNION FERRY COMPANY OF BROOKLYN
vs.
THE STEAMSHIP "FAVORITA," &C.

The report of Samuel T. Jones, U. S. commissioner, to whom it was referred to ascertain and apportion the damages caused by the collision set forth in the pleadings herein, having been filed, by which there is reported due to the libellants in this cause, upon such apportionment, the sum of eighteen hundred and two $\frac{20}{100}$ dollars, as by reference thereto will appear, to which report exceptions were filed by both parties, which exceptions have been argued by the counsel of the respective parties:

It is ordered that all of said exceptions be, and the same are hereby overruled; that the report be in all things confirmed, and that the libellants recover herein against the said steamship "Favorita," her engines, etc., as the damages due them on such apportionment, the said sum of eighteen hundred and two $\frac{20}{100}$ dollars, reported due as aforesaid, and that said steamship "Favorita," &c., be condemned therefor, and that each party pay his own costs.

And it is further ordered that the stipulators for value on behalf of said steamship "Favorita," &c., cause the engagements of their said stipulation to be performed, and that thereupon, and unless an
135 appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court, the clerk distribute such proceeds in satisfaction of this decree.

CHA'S L. BENEDICT.

(Endorsed:) U. S. D. C. The Union Ferry Company of Brooklyn vs. The Steamship "Favorita," her tackle, etc. Final decree and order confirming commissioner's report. Filed and entered the 3d day of May, 1870.

136 District court of the United States, eastern district of New York, in admiralty.

THE UNION FERRY COMPANY, OF BROOKLYN, libellants,
vs.
THE STEAMSHIP "FAVORITA," HER TACKLE, etc., claimants.

Please take notice that the libellants intend to appeal, and do hereby appeal, from so much of the final decree of this court entered herein as directs that the damages sustained from the collision in said decree mentioned be apportioned between the libellants and claimants; as denies costs to said libellants; as limits the amount of permanent damage and injury, sustained by the "Manhasset" from said collision, to $1,000 instead of the sum of $2,000; and as excludes from the amount which the libellants are entitled to recover, in whole or in part, the item expended by libellants for the costs mentioned in the commissioner's report, and in said decree.

Please take notice, also, that the libellants, on said appeal, intend to have said cause heard anew in the circuit court of said district on the same pleadings and proofs as in the district court and other proofs to be introduced in said circuit court.

137 Dated May 3d, 1870.

Yours, &c.,

B. D. SILLIMAN,
Proctor for Libellants.

To S. T. JONES, esq., *Cl'k dist. court.*
To BENEDICT, BURR & BENEDICT, Esq's,
Proc's for Claimants.

(Endorsement:) U. S. district court, eastern district of New York. The Union Ferry Company, of Brooklyn, libellants, vs. The Steamship "Favorita," her tackle, etc., claimants. Notice of appeal. B. D. Silliman, proctor for libellants, 43 Wall street. Filed May 4th, 1870.

138 Circuit court of the United States, eastern district of New York.

THE UNION FERRY COMPANY, OF BROOKLYN, libellant,
vs.
THE STEAMSHIP "FAVORITA," HER TACKLE, &c., claimants.

To the honorable the circuit court of the United States for the eastern district of New York in the second circuit.

The appeal of the above-named libellants, appellants, respectfully showeth:

That on or about the 28th day of April, 1865, the above-named libellants exhibited their libel in the district court of the United States of the eastern district of New York, against the steamship "Favorita," her tackle, &c., claiming over fifty dollars, and praying, among other things, for the reasons set forth in said libel, that process in due
139 form might issue against said ship, her engines, &c., and that the court would pronounce for the damages alleged in said libel and condemn said ship, her engines, &c., and all persons intervening for their

interest therein and for costs; that process issued out of said court accordingly, on which said ship was taken into custody, and on or about the 29th day of April, 1865, Charles W. West, agent for the Pacific Steam Navigation Company, as owners of said steamship, intervened and filed their claim and answer to said libel, praying that the same be dismissed with their costs in that behalf, as by reference to said libel and answer may more fully appear.

That said cause came on to be heard before the honorable Charles L. Benedict, judge of the said district court, on or about the 26th day of June, 1865, upon the testimony and proofs adduced by the respective parties; and the said judge, having advised thereon, on the 16th February, 1866, made a decree or sentence in said caus', whereby he decided that the collision in the pleadings mentioned was caused by negligence, both on the part of those in charge of and navigating the
140 ferry-boat "Manhasset," named in the pleadings, and also on the part of those in charge of and navigating said steamship "Favorita" at the time of said collision, and did adjudge and decree that the damages occasioned by said collision be apportioned between the libellants and the claimants, and that it be referred to one of the commissioners of said court to ascertain and compute the amount of damages, as by reference to said decree may more fully appear; under which decree a reference was had to Samuel T. Jones, esquire, one of the commissioners of this court, who reported that there was due to libellants the sum of one thousand eight hundred and two dollars and twenty cents; to which report the libellants excepted, for that said commissioner had allowed but one thousand dollars, instead of two thousand dollars, as the permanent damage sustained by said "Manhasset" from such collision, and had disallowed so much of the claim of the libellants
141 as consisted of costs paid by them in resisting the suit mentioned in the testimony taken before the commissioner; which report, on the third day of May, 1870, was confi'med by the said court by the decree thereof.

And these libellants, appellants, are advised and insist that the said decree is erroneous, inasmuch as the said libellants are entitled to recover the whole amount of the damage and loss sustained by them by reason of the collision mentioned in the pleadings; whereas by said decree all such loss and damage sustained by the claimants are apportioned between the libellants and claimants; and because the said libellants are entitled that the said decree should find that the permanent damage sustained by the "Manhasset" from such collision was the sum of two thousand dollars, instead of one thousand dollars as determined by said decree, and that said decree should have found that the libellants are entitled to recover the amount expended for the costs aforesaid, and for their costs of this suit, instead of no part thereof, as decided by said decree.

142 And these appellants, for these and other reasons, appeal to the next circuit to be held in said district, (and on said appeal they intend to have the said cause heard anew in said circuit court, on the same pleadings and proofs as in the district court, and other proofs to be introduced in the said circuit court,) and they pray that the said decree, in respect to the parts thereof above alleged to be erroneous, may be reversed, and such errors corrected, with costs; or such other decree thereupon made as to the said circuit court shall seem just, and that the said appellees be condemned to pay to these appellants their costs and damages in the premises & in this suit.

And they pray that the record and proceedings may be returned to

the said circuit court, and that the said decree me be so reversed and corrected as aforesaid, or such other decree thereon be made as to said circuit court shall seem just; and that the appellees may be condemned to pay to the appellants their costs and damages in the premises and in this suit.

BENJ. D. SILLIMAN,
Proctor for Libellants.

143

144 *Bond for costs.*

Circuit court of the United States of America, for the eastern district of New York, in the second circuit.

THE UNION FERRY COMPANY, OF BROOKLYN, libellants,
vs.
THE STEAMSHIP "FAVORITA," HER TACKLE, &c., claimants.

Know all men by these presents that we, The Union Ferry Company of Brooklyn & Benj. D. Silliman, are held and firmly bound unto the above-named claimants in the sum of two hundred & fifty dollars, to be paid to the said claimant; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 6th day of May, in the year of our Lord one thousand eight hundred and seventy. Whereas, the above-named libellants have prosecuted an appeal to the circuit court of the United States, to reserve in part the decree rendered in the above-entitled suit, by the judge of the district court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named libellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE UNION FERRY COMPANY, OF BROOKLYN,
By B. D. SILLIMAN, *their Att'y.* [L. S.]
B. D. SILLIMAN. [L. S.]

Sealed and delivered, and taken and acknowledged, this sixth day of May, 1870, before me.

SAMUEL T. JONES,
U. S. Commissioner.

145 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Benjamin D. Silliman, being duly sworn, depose' and says that he resides in the city of Brooklyn in said district; that he is worth the sum of five hundred dollars over and above his just debts and liabilities.

B. D. SILLIMAN.

Sworn to this sixth day of May, A. D. 1870, before me.

SAMUEL T. JONES,
U. S. Commissioner.

(Indorsed:) Vol. , page . U. S. circuit court. The Union Ferry Co., of Brooklyn, libellants, vs. The Steamship "Favorita," her tackle, &c. Bond for costs on . B. D. Silliman, proctor. Filed this 6th day of May, 1870.

146 U. S. district court, E. D.

THE STEAMSHIP "FAVORITA," &c.,
ads.
THE UNION FERRY COMPANY.

SIR: Please take notice that the claimants herein appeal from so much of the decree entered in this cause as holds the "Favorita" to blame for the collision in the pleadings mentioned, to the next circuit court in this district.

May 9, 1870.

Yours, &c.,

BENEDICT, BURR & BENEDICT,
Claim'ts' Proctors.

To B. D. SILLIMAN, Esq.,
Libell'ts' Proctors.
S. T. JONES, Esq., *Clerk.*

(Endorsed:) U. S. district court, E. D. Union Ferry Co. vs. Steamship "Favorita," &c. Notice of appeal. Benedict, Burr & Bene
147 dict, lib'ts' proctors. E. C. Benedict, adv., 64 Wall st. Filed May 12, 1870.

148 *Affidavit of service.*

U. S. circuit court, E. D.

UNION FERRY CO.
vs.
S. S. "FAVORITA."

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Geo. J. Leffert, of the said district, being duly sworn, doth depose and say that he did, on the 11th day of May, in the year 1870, serve B. D. Silliman, esq., app'l'ts' proct's in the above-entitled action, with an appeal, of which the annexed is a coppy, by delivering the same to Mr. Silliman personally.

GEO. J. LEFFERT.

Sworn to before me this 11th day of May, 1870.

W'M D. JONES,
Notary Public, Kings Co.

149 Circuit court of the United States for the eastern distric' of New York.

THE UNION FERRY COMPANY, OF BROOKLYN,
libellants & appellees,
vs.
THE STEAMSHIP "FAVORITA," HER TACKLE,
&c., The Pacific Steam Navigation Company,
claimants & appellants.

To the honorabl' the circuit court of the United States for the eastern district of New York, in the second circuit:

The appeal of the above-named claimants and appellants respectfully showeth:

That, on or about the 28th day of April, 1865, the above-named libellants exhibited their libel in the district court of the United States for the eastern district of New York against the steamship "Favorita," her tackle, &c., claiming over fifty dollars, and praying, among other things, for the reasons set forth in said libel, that said vessel be condemned and sold.

That process was thereupon duly issued; and, on or about the 29th day of April, 1865, The Pacific Steam Navigation Company intervened and filed their claim and answer, praying that said libel be dismissed with costs.

150 That same cause came on to be heard before the Honorable Charles L. Benedict, judge of said district court, on or about the 26th day of June, 1865, upon the proofs adduced by the respective parties, and said judge having advised thereon, on or about the 16th of February, 1866, made a decree in said cause, whereby he decided that the collision in the pleadings mentioned was caused by the negligence and fault of said ferry-boat "Manhasset" and said steamship "Favorita," and that the damages should be apportioned; and that it be referred to a commissioner of this court to ascertain and compute the amount of damages, and report to this court.

That such proceedings were thereupon had in such cause that, by the final decree of the court made and entered herein, on or about the 3d day of May, 1870, it was ordered, adjudged, and decreed that the libellants recover of the said steamship "Favorita," her engine, tackle, &c., the sum of eighteen hundred & two $\frac{20}{100}$ dollars, the amount so reported due.

And that claimants & appellants are advised and insist that the said decree is erroneous, as the libellants are not entitled to re-

151 cover any damages in said cause, and said libel should have been dismissed with costs.

And these appellants, for these and other reasons, appeal from said decree to the next circuit court to be held in said district, and on said appeal they intend to have said cause heard anew in said circuit court on the pleadings and proofs in the district court and other proofs to be introduced in said circuit court, and they pray that said decree may be reversed so far as it holds the said steamship "Favorita" to blame for said collision, and that the libel may be dismissed with costs; and they pray that the record and proceedings in this cause may be returned to the said circuit court.

BENEDICT, BURR & BENEDICT,
Appel'ts Proctors.

E. C. BENEDICT, *Ad'v.*

(Endorsed,) U. S. circuit court E. D. Union Ferry Co. vs. S. S. "Favorita" &c. Appeal. Benedict, Burr & Benedict, applt's procts. E. C. Benedict, ad'v., .64 Wall st. Filed May 12, 1870.

152 *Bond for costs.*

Circuit court of the United States of America for the eastern district of New York, in the second circuit.

THE UNION FERRY COMPANY, OF BROOKLYN, libellants & appellees,
vs.
THE STEAMSHIP "FAVORITA," HER ENGINE, &c., The Pacific Navigation Company, claimants & appellants.

Know all men by these presents that we, The Union Ferry Company, of Brooklyn, Benjamin D. Silliman, are held and firmly bound unto the above-named claimants & appellants in the sum of two hundred & fifty dollars, to be paid to the said appellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 14th day of November, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named appellants have prosecuted an appeal to the circuit court of the United States, to *reserve* the decree rendered in the above-entitled suit, by the judge of the district court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

UNION FERRY COM'Y, OF BROOKLYN,
By B. D. SILLIMAN, *their Att'y.* [L. S.]
BENJ. D. SILLIMAN. [L. S.]

Sealed and delivered, and taken and acknowledged, this 14 day of November, 1870, before me.

D. C. WINSLOW.

153 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Benjamin D. Silliman, being duly sworn, depose and say, that he is worth the sum of five hundred dollars over and above his just debts and liabilities.

BENJ. D. SILLIMAN.

Sworn to this 14th day of November, A. D. 1870, before me.
D. C. WINSLOW,
U. S. Comm'r.

(Indorsed:) Vol. , page . U. S. circuit court. The Union Ferry Co., of Brooklyn, lib'l'ts & appellees, vs. The S. S. "Favorita," her engine & The Pacific Steam Navigation Co., cl't & app'l'ts. Bond for costs on appeal. , proctor. Filed this 14th day of November, 1870.

154 *Bond for costs.*

Circuit court of the United States of America for the eastern district of New York in the second circuit.

THE UNION FERRY COMPANY, OF BROOKLYN, libellants & appellees,
vs.
THE STEAMSHIP FAVORITA, HER ENGINE, TACKLE, &c., The Pacific Steam Navigation Company, claimants & appellants.

Know all men by these presents that we, Francis W. G. Bellows and Allen McLane, are held and firmly bound unto the above-named libellants & appellees in the sum of thirty-seven hundred dollars, to be paid to the said libellants & appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the twelfth day of November, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named claimants & appellants have prosecuted an appeal to the circuit court of the United States for the eastern district of New York, to *reserve* the decree rendered in the above-entitled suit by the judge of the district court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

FRANCIS W. G. BELLOWS. [L. S.]
ALLEN McLANE. [L. S.]

Sealed and delivered, taken and acknowledged, this 12th day of November, 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

155 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Francis W. G. Bellows and Allen McLane, being duly sworn, doth depose and say, & each for himself says, that he is worth the sum of seven thousand four hundred dollars, over and above his just debts and liabilities.

FRANCIS W. G. BELLOWS.
ALLEN McLANE.

Sworn to this twelfth day of November, A. D. 1870, before me.

EDWARD L. OWEN,
U. S. Commissioner.

(Indorsed:) Vol. , page . U. S. circuit court. The Union Ferry Co. vs. The Steamship "Favorita," &c. Bond for damages and costs on . , proctor. Filed this 14 day of November, 1870.

I approve of the within bond & of the sufficiency of the securities. November, 1870.

156 At a stated term of the circuit court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 15th day of November, in the year of our Lord one thousand eight hundred and seventy-one:

Present, the honorable Lewis B. Woodruff, circuit judge.

THE UNION FERRY COMPANY, OF BROOKLYN, libellants and appellants.
ag'st
THE STEAMSHIP "FAVORITA," HER ENGINE, etc., Pacific Steam Navigation Company, claimants and appellants.

This cause coming on to be heard on appeal, and after hearing the advocates for the respective parties, and due deliberation having been had in the premises, it is ordered, adjudged, and decreed that the decree of the district court appealed from herein be, and the same is hereby, modified and altered, so that the libellants herein shall recover the whole amount of the damages by them sustained by reason of the collision in the pleadings mentioned; and it is further ordered and decreed that the libellants, The Union Ferry Company, of Brooklyn, do recover against The Steamship "Favorita," her tackle, etc., the sum of thirty-nine hundred and twelve $\frac{04}{100}$ dollars, the amount of the damages by them sustained by reason of the collision in the pleadings mentioned, as reported by the commissioner, together with the sum of four hundred and twenty-three dollars and fifty-one cents interest thereon, from the date of the commissioner's report in the district court in this case, and also the sum of three hundred and sixty-two and $\frac{62}{100}$ dol-
157–158 lars, the costs as taxed herein, amounting in all to the sum of four thousand six hundred and ninety-eight and $\frac{17}{100}$ dollars, and that said steamship "Favorita," her tackle, etc., be condemned therefor.

And it is further ordered that unless an appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court, that said David W. Hoadley and Charles W. West, the stipulators for costs and value herein on the part of the claimants, and Francis W. G. Bellows and Allan McLane, the stipulators by bond on appeal, do cause the engagements of their stipulations and bond to be performed, or show cause why execution should not issue thereon.

L. B. WOODRUFF,
Circuit Judge.

Above decree approved as to form.

159 B. T. & B., *for Claimants.*

160 (Indorsed:) U. S. circuit court eastern district of N. Y. The Union Ferry Co., lib'll'ts & appl'ts, vs. The Steamship "Favorita," her tackle, etc., cl'ts & appl'ts. Final decree. Benjamin D. Silliman, att'y for lib'll'ts, 40 Wall st., N. Y. Filed and entered the 15th day of Nov., A. D. 1871.

161 Circuit court of the United States for the eastern district of New York.

THE UNION FERRY COMPANY, OF BROOKLYN, libellants and appellees, *ag't.*
THE STEAMSHIP FAVORITA, HER ENGINE, ETC., The Pacific Steam Navigation Company, claimants and appellants.

To the honorable the Supreme Court of the United States:

The appeal of the Pacific Steam Navigation Company, the above-named claimants and appellants, respectfully showeth:

That on or about the 28th day of April, 1865, The above-named, The Union Ferry Company, of Brooklyn, filed their libel in the district court of the United States, for the eastern district of New York, against the steamship "Favorita," her engine, tackle, etc., in a cause civil and maritime, for the recovery of more than two thousand dollars damages, alleged to have been sustained by the libellants in the injury done to their steam-
ferry-boat "Manhasset," by reason of the collision in the plead-
162 ings mentioned; that the answer of the claimants and appellants was thereafter, and on or about the 23d day of May, 1865, duly filed, stipulations for costs and value having theretofore been given, and a claim filed, and the vessel discharged from the custody of the marshal.

That such proceedings were thereupon had in said cause that, on or about the 16th day of February, 1866, a decree was made in said cause whereby it was ordered that the damages occasioned by said collision be apportioned between the libellants and the appellants, and that it be referred to a commissioner to ascertain and compute the amount of such damages and report thereon to the court.

That the commissioner to whom it was referred, thereafter duly filed his report, wherein he reported the damages sustained by the libellants at the sum of $3,912.04, and the damages sustained by the claimants at the sum of $407.64, and that said damages should be apportioned, and the libellants recover of said steamer "Favorita" the sum of $1,802.20, which report was duly confirmed.

That thereafter, and on the 3d day of May, 1870, a final decree was made and pronounced in said cause by the said district court, wherein it was ordered, adjudged, and decreed that the libellants and appellees recover against said steamship Favorita, her tackle, etc., the sum of
eighteen hundred and two $\frac{26}{100}$ dollars, the damages so ap-
163 portioned between the libellants and the claimants.

That thereafter, both the libellants and the claimants duly appealed from said decree to the circuit court of the United States for the eastern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew, and such proceedings were thereupon had that, on or about the 15th day of November, 1871, the said circuit court made a final decree in said cause whereby the said decree of the district court was so modified and altered as to decree that the libellant and appellee recover the whole amount of the damages sustained by them by reason of said collision, together with their costs; and it was further ordered that the stipulators for costs and value, and on the appeal, cause the engagements of their stipulations to be performed; which decree of the said circuit court is, as these appellants are advised, erroneous, and ought to be reversed, and the libel of the libellants dismissed with costs.

Wherefore the claimants and appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that the decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the
164 United States, without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made dismissing said libel, with costs, or such other decree as to the said Supreme Court shall seem just.

BENEDICT, BURR & BENEDICT,
Proc's for Claim'ts and Appell'ts.
E. C. BENEDICT, *Advocate.*

(Indorsed:) U. S. circuit court. The Union Ferry Co., of Brooklyn, libellants & appellees, *vs.* The Steamship "Favorita," her tackle, etc., Pacific Steam Navigation Company, claimants & appellants. Appeal to the United States Supreme Court. Benedict, Burr & Benedict, claim'ts & appl'ts' proc's, 64 Wall street. Filed November 16th, 1871.

165 *Bond for costs.*

Circuit court of the United States of America for the eastern district of New York, in the second circuit.

THE UNION FERRY COMPANY, OF BROOKLYN, libellants and appellants,
vs.
THE STEAMSHIP "FAVORITA," HER ENGINE, etc., The Pacific Steam Navigation Co., claimants and appellants.

Know all men by these presents that we, Francis W. G. Bellows, of New York City, and Theodore I. Johnson, of New Rochelle, State of New York, are held and firmly bound unto the above-named libellants & appellees in the sum of two hundred and fifty dollars, to be paid to the said libellants and appellees; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the second day of December, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas the above-named claimants & appellants ha' prosecuted an appeal to the Supreme Court of the United States of America to reserve the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named claimants & appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

FRANCIS W. G. BELLOWS. [L. S.]
THEODORE S. JOHNSON. [L. S.]

Sealed and delivered, and taken and acknowledged, this 2d day of December, 1871, before me.

[L. S.] SAMUEL H. VALENTINE,
Notary Public, N. Y. Co.

166 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Theodore S. Johnson and Francis W. G. Bellows being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above his just debts and liabilities, and is a resident and house-holder within this State.

Sworn to this 2d day of December, A. D. 1871, before me.

[L. S.] SAMUEL H. VALENTINE,
Notary Public, N. Y. Co.

I hereby approve of the within bond, as to form, and as to the sufficiency of the sureties thereon.

Dated Dec. 14th, 1871.

L. B. WOODRUFF,
Circuit Judge.

(Indorsed:) Vol. . Page . U. S. circuit court. The Union Ferry Co., of Brooklyn, vs. The Steamship "Favorita," etc. Bond for costs on appeal to U. S. Supreme Court. Benedict, Burr & Benedict, cla'm'ts & appell'ts' proctors. Filed this 15th day of December, 1871.

167 By the Honorable Lewis B. Woodruff, judge of the circuit court of the United States for the eastern district of New York, in the second circuit.

To The Union Ferry Company, of Brooklyn:

Whereas the Pacific Steam Navigation Company, claimant of the steamship "Favorita," her tackle, etc., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of New York, in the second circuit, made in favor of you, the said Union Ferry Company, of Brooklyn, against the said steamship "Favorita," her tackle, etc., and have filed the security required by law:

You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the seventeenth day of January, 1872, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the fourteenth day of December, in the year eighteen hundred and seventy-one.

L. B. WOODRUFF,
Circuit Judge.

(Indorsed:) U. S. circuit court eastern district of New York. The Union Ferry Company, Brooklyn, libellants & appellee, ag'st Steamship "Favorita," her engine, etc., Pacific Steam Navigation Company, claimants & appellants. Citation. Benedict, Burr & Benedict, cl'm'ts & app'll'ts' proc's.

I hereby admit service of a copy of the within citation, and consent that such service have the same effect as if the citation was served personally on the libellant and appellee.

Dec. 15, 1871.

BENJ. D. SILLIMAN,
Proc. for Lib'll'ts.

Filed Dec. 16, 1871.

168 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Samuel T. Jones, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 169, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The Union Ferry Company, of Brooklyn, against The Steamship "Favorita," her tackle, &c., as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, in the second circuit, this 19th day of February, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the said United States the ninety-sixth.

[SEAL.] SAMUEL T. JONES, *Clerk.*

(Indorsement on cover:) No. 349. The Steamship "Favorita," her tackle, &c., The Pacific Steam Navigation Company, claimant, appellant, vs. The Union Ferry Company, of Brooklyn. E. New York C. C. U. S. Filed 21st February, 1872.

168 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Samuel T. Jones, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 169, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The Union Ferry Company, of Brooklyn, against The Steamship "Favorita," her tackle, &c., as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, in the second circuit, this 19th day of February, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the said United States the ninety-sixth.

[SEAL.] SAMUEL T. JONES, *Clerk.*

(Indorsement on cover:) No. 349. The Steamship "Favorita," her tackle, &c., The Pacific Steam Navigation Company, claimant, appellant, vs. The Union Ferry Company, of Brooklyn. E. New York C. C. U. S. Filed 21st February, 1872.

V Benedict —
113, Howard, 111 —
14, Wallace 217
Cayuga
7 Blatchford 385 —
2 Hun
The Rhode Island

U. S. Supreme Court.

The Steamship "FAVORITA," The Pacific Steam Navigation Co.,
Claimant and Appellant,

vs.

The UNION FERRY CO. of Brooklyn
Libellant.

Points for Appellant.

HISTORY OF THE CASE.

The libel in this case was filed by the Union Ferry Co., as owners of the ferry-boat "Manhasset," to recover the damages sustained by that vessel in a collision with the "Favorita," which occurred on the afternoon of April 14, 1865. The District Court held both vessels liable, and apportioned the damages. Both parties appealed from that decree to the Circuit Court, and that Court reversed the decree of the District Court, and held the "Favorita" to be alone liable. From that decree this appeal is brought.

The opinion of the District Court will be found reported in 1 Benedict, p. 30, and that of the Circuit Court in 8 Blatchford, p. 539.

STATEMENT OF THE FACTS.

The "Favorita," which had been built in New York for the Pacific Mail Steamship Co., of Liverpool, went down the Bay on the day in question on her engineers' trial trip.

She was in charge of her master and of an experienced and competent pilot, and had her builders on board. Coming back she ran up the North River, and thence took her way up the East River against the ebb tide, meeting several vessels on her way up (fol. 42). Porting her helm to avoid them, as she was bound to do, she passed the slip of the Fulton Ferry on the Brooklyn side at a distance of about a hundred yards, at a speed of about seven miles an hour, on a straight course up for Corlear's Hook. Shortly after she passed the Fulton Ferry slip, the ferry-boat "Manhasset" came out of the Catherine Ferry slip on the Brooklyn side. As her course crossed that of the "Favorita," the vessels were then under the operation of the 14th and 18th Rules for avoiding Collisions. It was the duty of the ferry-boat to keep her course, and that of the "Favorita" to avoid her. The "Favorita" took instant measures to accomplish this. She ported her helm to go under the stern of the ferry-boat, and stopped and backed her engine. (fol. 42.) The "Manhasset" did not keep her course. She ran out several hundred feet from the shore till she was directly in front of the "Favorita," when her pilot stopped and reversed his engine and then blew two whistles. (fol. 28.) It was then entirely too late to change the swing of the "Favorita," and the effect of the reversal of the "Manhasset's" engine was to back her into the path of the "Favorita" which struck the "Manhasset" just forward of her wheel, about eighty feet from the Brooklyn end of her. (fol. 28.)

The vessels were both side-wheel steamers and of nearly equal size, the "Manhasset" being 150 feet long, (fol. 45) and the "Favorita" 200 feet. (fol. 48.)

POINTS.

FIRST.—It is incumbent upon the libellants, if they would sustain the decree appealed from, to show that the ferry-boat complied with the rules of navigation, and was free from fault.

"In order to recover full indemnity, the suffering vessel should be without fault. Generally the burden of proof rests upon the libellants."

The Grace Girdler, 7 Wall., 203.

See, also, The City of London, Swabey, 248; The Carron, 1 Spinks, 93; The Victoria, 7 Jur., 94; The Columbus, 1 Abb. Ad. R., 385.

SECOND.—This the libellants can never do. The "Manhasset" was clearly guilty of two gross violations of duty. (1.) She kept no proper look-out. (2.) She did not keep her course as the law required.

a. She had no proper look-out, for she failed to see the "Favorita" as soon as she should have done. We make no point against her because she did not see the "Favorita" before she started from her slip, although it is by no means clear but that she could and ought to have done so. But, from the position of the vessels, it is manifest that the "Favorita" was in full view as soon as the "Manhasset" passed the stern of the ship which lay at the pier on the west side of the ferry slip. A careful look-out, properly placed on her stem, would have seen the "Favorita" as soon as the stem of the "Manhasset" passed by the stern of that ship; that is, as soon as she had run fifteen feet out from the mouth of the slip. Now her look-out, Thomas, says he did not see the "Favo-

rita" till the *stern* of the "Manhasset" was 50 feet out from the slip. (fol. 35). She had thus run 185 feet after he ought to have seen her before he did see her. Even then he gave no notice to the pilot, and he says the boat "went out about *half a minute more*, when the pilot rang the gong to stop." (35). And this Titus, the pilot, swears he did "instantly" on his seeing the "Favorita" (28), and repeats it on his cross examination. (29).

It is true that Titus swears that he saw the "Favorita" as soon as he passed the stern of that ship (fol. 29); but in this he is contradicted, not only by the above evidence of Thomas, but by his own evidence that the bells, which he rang "instantly," "as soon as he saw her," were rung just as Conklin "opened the door of the pilot-house" (fol. 29), for Conklin, who was on the lower deck, did not *start* to go to the pilot-house till the ferry-boat had got out of the slip. (Fol. 37). So that he had had time to go from the lower deck up the staircase, which was "at the Brooklyn end of the center house," and walk forward to the forward pilot-house, after the boat left the slip, before Titus saw the "Favorita."

What we shall have to say hereafter, as to the distance of the collision from the shore, will corroborate this evidence.

It thus appears that this pilot, who was substantially the only look-out, since no report was made to him, failed to see the "Favorita," till his boat had run 300 or 400 feet out into the river, although the "Favorita" was in full view. One cause of this negligence is obvious. He had two visitors in his pilot-house, (fol. 30) a most unseamanlike performance; and although he says, it is true, that he "don't remember speaking to them," the failure to

call them, who were from their position as good witnesses of the facts as he, is strongly suggestive of the suspicion that, if they had been called, they must have explained why Titus failed to see the "Favorita."

b. Titus, having failed to see the "Favorita" as soon as he should, was as a matter of course flurried when he did see her. Accordingly, without waiting to look at the situation, and to see what was his duty to do and what the "Favorita" was doing, he rang his bells "instantly," "as soon as he saw her," to stop and go back. If he had had his wits about him, he would have seen that the "Favorita" was already sheering on a port wheel to go under his stern and stopping her own headway. His stopping and backing his boat was therefore not only a direct violation of the 18th Rule for Preventing Collisions, but it was obviously a manœuvre which caused the collision. If he had kept on the "Favorita" would have passed in safety under her stern, as will be plainly seen on the evidence.

1. The "Manhasset" was then directly ahead of the "Favorita," (her wheels had passed our stem about half way from the wheels to the stem when she stopped. Maginn, 42.) She backed and was struck about 80 feet from her stern, just forward of her wheel. She would have had therefore to run forward to clear the "Favorita" a distance of less than 90 feet.

(2.) Her Pilot rang her bells to stop and back, blew two whistles, called through the trumpet to back her strong, and blew two whistles again, and then left his pilot-house and ran to

the other end of the boat before the collision. (Maginn, 43; Westervelt, 53.) The engineer had time to stop his engine and reverse it, and to back long enough to stop her forward motion entirely, and to give her a little way backward. "I should say we backed 10 feet, perhaps not so far." (Conklin, fol. 30.) "She had backed a little more than half way past our stem." (Smith, 47.) "The ferry-boat continued to back." (Secor, 48 and 50.) "She backed one or two lengths, I should think." (Westervelt, 52.)

3. Neither the pilot nor any of the hands on the "Manhasset" testify as to the distance of the "Favorita" when the bells rang. But Conklin, the passenger, says, "she was then 150 feet off, or a little more," (fol. 37.) Thus she had much farther to go and her engine had been already stopped.

4. The united evidence of the seven witnesses from the "Favorita" is positive that if the "Manhasset" had not stopped there would have been no collision.

"If the ferry-boat had gone on, she would have cleared us."

Maginn, 43.

"I think, if she kept on without backing, we should not have touched her."

Smith, 47.

"I say, and did say at the time, that had the ferry-boat kept her course, we would have gone clear under her stern. There is no doubt about that."

Secor, 49.

"I think there was space enough to have gone under her stern, if the ferry-boat had gone on. * * * I gave earnest attention to her—very earnest.

Westervelt. 52.

"If she had not stopped, she would have gone clear of us." Robertson, 70.

"There was plenty of room (to pass under her stern) if she had gone on." Hall, 76

"If the ferry-boat had kept on, there can be no doubt but that we should have cleared her under her stern." Bruce, 82.

Opposed to these seven witnesses there are, from the ferry-boat, but two, Titus and Thomas. (Fol. 36.) Steers and Conklin, the deck hand and passenger, neither of them testify on this point.

THIRD.—Both these faults of the ferry-boat were held by the District Court to be manifest upon the evidence.

The Circuit Judge does not allude to the first fault, and holds the latter fault to be excused, because it was an error committed, if at all, *in extremis*.

a. But this failure to keep a look-out was vital. "The duty of the look-out is of the highest importance. * * * In the performance of this duty the law requires indefatigable care and sleepless vigilance. * * * It is the duty of all Courts to give this requirement the fullest effect whenever the circumstances are such as to call for its application. Every doubt as to the performance of the duty and the effect of nonperformance, should be resolved against the vessel sought to be implicated,

until she vindicates herself by testimony conclusive to the contrary."

The "Ariadne," 13 Wall, 478.

Nowhere is greater rigor required in the application of this rule than in the crowded waters of the harbor of New York; and no vessels need it more than the ferry-boats which cross those waters, for the familiarity of their crews with the crowded state of those waters is most apt to be the parent of negligence.

b. Moreover it is quite apparent that the cause of the pilot's error was not anything sudden or unexpected in the movements of the "Favorita." She had been full in sight from the moment the "Manhasset" left her slip. If the change of her course were imperative it was as obviously so at that moment as when it was made. He did not make it at that moment because of his faulty look-out. Then when he became aware of the approach of the "Favorita," he was flurried, and made the wrong movement. He can not lay claim to the benefit of the rule *in extremis*. That rule has no application where the person, who claims the benefit of it, has himself been in fault in failing to keep a look-out.

FOURTH.—We come now to consider the alleged fault of the "Favorita." It will be noticed that the faults charged on her in the libel are that she sheered in towards the Brooklyn shore; that she did not slow, stop and back, and did not sheer towards the New York shore, or keep a look-out, (fol. 6–7.)

The District Judge found none of these faults es-

tablished. He held the "Favorita" liable on a new ground, viz.: that she had failed to comply with the Statute of the State of New York, requiring steamers to keep "as near as possible in the centre" of the East River.

The Circuit Judge did not sustain this view, nor the view taken by the libel. He charges her on two grounds, viz.: (1) that she was too close to the piers for the speed she had, and (2) that though her speed was not unreasonable, it was too great for her position in the river, because, as he says, being where she was, she was "going at a speed at which all the efforts made to stop her, when danger of collision appeared, were ineffectual." But we submit that those efforts would not have been ineffectual, if the "Manhasset" had done her duty. The "Favorita" was called on to assume such a speed and position as would enable her to clear a ferry-boat coming out and holding her course. She was not called upon to assume (1) that the pilot of the "Manhasset" would fail to see her, nor (2) that after the "Manhasset" had run out several hundred feet, and after the "Favorita" had taken the measures proper to avoid her, those measures would be thwarted by a sudden violation by the "Manhasset" of the rule of law which commanded her to keep her course.

FIFTH.—But we suppose that the learned Counsel for the appellees will also seek to sustain the view of the District Court on this point, and will argue that the "Favorita" was violating the State Statute of 1848. We therefore proceed to argue that point.

a. It is a good answer to this charge that it is not set up in the libel.

But the "Favorita" was in fact navigated "as near as possible in the centre of the river," as the Act prescribes.

McGinn, the pilot, who had the vessel in charge, testifies (fol. 87), "I could not go up in the middle of the river." This is entirely uncontradicted.

He also states what his course up was, and why he made that course, which was not close along the Brooklyn shore. He says (fol. 83), "we met the first vessel between the two reefs."

These two reefs are down in the channel between Coenties Slip and Governor's Island. Vid. chart.

"We ported to clear her. We met several others "and ported for them all. The tide was ebb. "This course brought us to within one hundred "yards of the end of the dock at Fulton Ferry. "There were a number of vessels beating down "the river."

This is not only uncontradicted, but is fully sustained by the evidence of Hall, the master (fol. 76), and that of Robertson, the quartermaster (fol. 69, 71, 72), so that it is beyond controversy that the "Favorita" came to three hundred feet from the Fulton Ferry pier, by repeated necessary portings.

The District Judge makes a suggestion of her seeking the eddy, but she was not then in the eddy, and had not been in the eddy.

Freestone says (fol. 31), "The little steamship was coming up against the ebb tide," and Cole (40) says "she was in the *tide* at the collision." This was after she had ported, and stopped and reversed her engine to go under the stern of the ferry-boat, which was out of the slip several hundred feet, and had run on that port wheel eight hundred to one thousand feet. (Hall, 75).

The only testimony on the subject of the eddy is by Cole, who says: (fol. 40) "She was sheering in towards the eddy." This was after she passed Fulton Ferry and when she was porting to go under the stern of the ferry-boat.

b. There is no proof on which a conviction under the Statute can be based. What is the middle of the river, nautically speaking? It certainly is not the "*filum aquae*," the exact middle thread of the water. No vessel has any means of ascertaining that, nor is it possible to keep it in a crooked and rapid thoroughfare of varying width, and of impetuous tides, rebounding from one side to the other, like the East River. It is not unreasonable to say that "the middle" of the East River at Catharine Ferry is at least five hundred feet wide, five hundred feet for the west side, five hundred feet for the east side, and five hundred feet for the middle.

c. The State Statute of 1826, 1 R. S. 684, § 1, provides that steamboats meeting each other shall go towards that side of the river which is to the starboard, or right side of such boats, which is also the rule of the maritime law, to which the "Favorita" conformed.

d. We have been referred before, and we may be referred now, to the ordinance of the Common Council and the statute authorizing it. The corporation ordinance provides that vessels shall not lie in the East River within *sixty yards* of the *ferry landing*. The "Favorita" was nearly twice that distance at the Fulton Ferry, and everywhere else was still

further off shore. She was not within the limits fixed by the statute or the ordinance.

The Act authorizing the Common Council of New York to grant privileges to a steam ferry-boat was passed in 1814, when steam was new on the water, and there had never been a steam ferry anywhere. The aggregate population within what are now the two cities was less than 100,000; it is now little less than 1,500,000. The Fulton Ferry and the Jersey City Ferry were the only ferries, and now there are twenty, and maritime trade and commerce has increased in much greater proportion. Old rules must yield to new necessities.

Such changes are properly to be taken into account in considering such questions; as was shown by this Court, in 12 Howard, 456, (The "Genesee Chief,") first paragraph on the page, when overruling the case of the "Thomas Jefferson." The Court say, the great importance of the question could not be foreseen. "The decision was made in 1835, when the commerce on the rivers of the West and in the lakes was in its infancy, and of little importance, and but little regarded compared with that of the present day."

The idea that the constantly increasing number of large, swift and powerful ferry-boats on the very numerous ferries in the harbor of New York are a privileged class, exempt from the maritime rules, and entitled by a whistle to overrule the maritime law, and to dictate a course to other vessels, is hostile to commerce and ruinous to that harbor, and dangerous to life and property, and cannot be submitted to. There is no reason why a ferry-boat should not stop and back, and go fast or slow, to the right or the left, like any other

steamboat. A delay of a quarter of a minute or a minute, to prevent accident, is no more to be complained of by her, than by another steamer.

e. The Statute however, is nothing but a *penal* Statute against *persons*. It is not a maritime rule of navigation. Its whole force is to punish penally the *person*, (master, pilot or engineer,) who shall violate it, by indictment, trial, fine and imprisonment, or by a penalty to be recovered by an action of debt on pleadings. In both of which cases, the party charged has the right of defense on pleadings before a jury.

This Court cannot make the offense a maritime cause of action, against a foreign vessel *in rem*, thus passing over the guilty persons, who are within the jurisdiction, and punishing excessively the innocent owners, who have never been within the jurisdiction, and have never heard of the Statute. The State cannot make a maritime regulation affecting foreign vessels. This question is settled by the case of the "New York," (18 Howard, 225–6); by the dissent of the eminent Admiralty Judges *Nelson*, *Grier* and *Clifford*, from holding vessels *liable for negligence merely for want of exact conformity to port regulations*, in "The James Gray," (21 How., 190); and by the unanimous decision of this Court, that they did not "feel justified on any principles "of justice, equity, or of public policy, in inflict-"ing an additional penalty of $7,000 on the libel-"lants, by way of set-off, because their servants "may have been subject to a penalty of twenty "shillings each for breach of the Statute." (23 Howard, 218, Phil. and Wilmington RR. Co., *vs.* Phil. and Havre de Grace Steam Tugboat Co.)

That was a case of a libel for a tort, when the party was engaged in the unlawful act of violating a State penal Statute. And, finally, the case of The Johnson, 9 Wallace, 146, was like this case, this same Statute having been solemnly argued as a defense. The report of the case contains a chart of the locality, which was Fulton Ferry instead of Catherine Ferry, and shows, as the fact was, that the "Burden" was hugging the shore, without any chance for saying she was in the middle of the river, "*going slowly up in the eddy tide, 100 to 150 feet from the Brooklyn piers.*" Yet the Court in deciding the case do not notice that defense, and decide the case on the rules of the maritime law, against the party setting up that defense. The report of the case, 9 Wallace, 146, shows the situation of the vessels, and this point was made and argued as a principal defense.

Vid. pp. 11 to 13 of Points for the "Burden."

Vid. pp. 18, 19, 20 of Points for F. A. Potts.

We are out of State leading strings in matters entrusted to the United States Judiciary. The East River is but a rapid tidal strait between islands in the sea. The State may punish individuals for violating its police regulations, but it cannot change the maritime law. This point was argued in the case of the "Johnson."

f. In that case of the "Johnson," as in this, the party relied upon his blowing his whistle as dictating to the other party what course he should pursue, and then at the same time, without waiting, starboarding his helm and stopping, when by the maritime law he should have ported and kept on. In this case, still worse, he took his course first, "stopped his boat and backed her instantly," (fol. 28,

29), without notice, and then blew his whistle when it was too late to change. That case (pages 154-5), decides this case on this point as well as on others.

SIXTH.—But let us look a little at the evidence as to the position of the "Favorita." The evidence for the libellants is as follows:

a. The first witness on this point is Titus, who says she was "200 or 250 feet from the shore" when he first saw her (27), and that at the collision the "Manhasset's" stern was "100 feet clear of the pier" (28); making the "Favorita" 180 feet from the pier at the collision. It will be remembered that the "Favorita" ported when the "Manhasset" was first seen coming out of the slip, "800 to 1000 feet" off (Hall, 75). She had therefore been running on a port wheel some time before Titus saw her. Titus' confusion of estimates is manifest on his cross-examination (29).

The next witness is Freestone. He puts the "Favorita" at "100 feet from the bulkhead" at the collision (33). But he was a quarter of a mile off, on the other side of the river, in the worst possible position for estimating that distance.

Thomas, the next witness, who says, when he saw the "Favorita" she was off Marston & Powers' dock, which is 500 or 600 feet below the ferry slip, says she was then "120 feet off shore" (36), and the stern of the ferry-boat was then "50 feet out of the slip" (35). The "Manhasset" would then have had but 70 feet to run while the "Favorita" ran 500 feet. No clearer proof of

Titus's fault in stopping could be found than this, if true.

Conklin, who did not see the "Favorita" till just as Titus did, fixes her distance out at "150 to 200 feet," (38) coming on "a pretty rank sheer inshore." He gives no estimate of the distance at the collision.

Steers says she was "when half way between the Fulton and Catherine ferries, 150 to 200 feet out" (38).

Cole says she was out "160 to 200 feet when off Marston & Powers' dock" (40), and the same at the collision, although she was sheering inshore.

These witnesses for the libellants are subject to the criticism (1) that they make no proper allowance for the sheer of the "Favorita;" (2) that their evidence, if taken as true, establishes beyond a question the fault of the "Manhasset" in stopping, because if the "Favorita" was as close in as they say, the "Manhasset" must have got far by her if she had kept on.

b. Turn now to the evidence of the claimants.

Maginn says the "Favorita" was "100 yards from the shore," at Fulton ferry (42). Unless she ported at that point, of which there is no evidence, she would increase her distance from the shore by reason of the bend of the shore till she ported on seeing the "Manhasset," "half way between Brooklyn (? Fulton) and Catherine ferries" (42).

Smith says they were "two lengths out" or 400 feet, when the ferry-boat began to come out (46), but he did not notice the distance out particularly.

Secor says she was "a length or a length and a half out" (48); but he gives the distance from her

at two lengths, so that he saw her later than Westervelt, who, when the vessels were "1,000 feet" apart, fixes the distance of the "Favorita" at "two or three lengths from the pier heads." (52).

Burns (68) gives the distance at "400 or 500 feet."

Hall (75) makes it "600 to 800 feet," and

Bruce (81) "600 or 800 feet."

SEVENTH.—Taking the evidence of Titus that the ferry-boat's stern was 100 feet from the pier at the collision, (28) and he would certainly estimate that at less than it was, and we have the "Favorita" 200 feet out in the river at the collision, after she had run 800 or 1000 feet, ("Distant then about 1,000 feet," Westervelt 52; "800 to 1,000 feet below her," Hall, 75; 600 or 800 feet from shore and "a little farther from ferry-boat" Bruce 81) on a port wheel. The speed of the "Favorita" was about seven miles an hour, (Hall 75, Bruce 81) for she was not running at full speed, "had slowed our engine for a schooner," Maginn, 42.

That was not a high rate of speed. The Circuit Judge finds that it was not, except for the path she pursued. But being as far below the ferry as she was, when the ferry-boat started, a course as near the docks as she was, was really safer than one farther out, for the ferry-boat would have less distance to run to get by.

The movement of the ferry-boat, in stopping and backing when right ahead of the "Favorita," was no less dangerous than if the latter had been farther out in the river. Wherever she was, that manœuvre would have produced the same results. It was that which thwarted the efforts of the "Favorita," which would

have otherwise been successful in avoiding the collision. And, therefore, it was that which caused the collision, and the "Manhasset" should be held solely responsible.

EIGHTH.—But if the Court should think that the "Favorita" is in any degree, or even wholly, chargeable with fault, still this decree must be modified on the question of damages. Neither the demurrage nor the item for permanent depreciation should be allowed. (See Exceptions, fol. 133.)

a. Nothing is better settled than that the party can recover nothing more than the actual damage proved to have been caused by the accident. (13 Howard, 110, 111, 112, Williamson *vs.* Barrett.) "The leading maxim is *restitutio in integrum* in all suits for damages occasioned to vessels by collision."

The "Cayuga," 14 Wall, 278.

Lowndes on Collisions, p. 140.

It is a mere question *of indemnity* for actual, present loss, not for contingent future damages, and still less a giving of an actual profit, as in this case. As clear and absolute proof is required of the items of damage as of the principal fact of collision. We cannot in one case, or the other, be satisfied with proof that it may be so—that it possibly or probably is so—it must be *proved* that it *is* so. It has come down through the ages, sifted and purified and crystallized into an axiomatic truth in the law, that *incerta pro nullis habentur*—that which is uncertain—which may be true and may be false—is not proved—goes for nothing.

b. Now in this case there is no proof of $750 loss, by the mere laying up of the boat while undergoing

repairs. On the other hand the proof is that there was no loss.

The managing director, Mr. Smith, testifies (fol. 102,) that the "receipts of the company were not affected by the collision." Then how were they damaged by the laying up of the boat?' They say by the price of hiring another boat. But they did not hire a boat—nor have an opportunity to let one of their boats. They cannot let their relief boats—they keep them to put on on five minutes notice. They in fact lost nothing on this ground, still the Commissioner allowed $750 for demurrage—$75 per day.

All the boat hands and expenses were put on the relief boat, so that there was no loss except the use, wear and tear of the substituted boat, which the Company put at one-fourteenth of her value—or $2,000 for that year, which is only $6 a day. The foundation of $75 a day is fancy —supposition—guess-work—not proof. The mere opinion or judgment of the witness himself is but conjectural and speculative. 4 Blatchford, 22, The Isaac Newton. Perjury could not be charged on such testimony.

If this amount is allowed, the result will be that this Company will have made $750 profit by this collision. That is not *restitutio in integrum*. This feature makes the case different from that of the "Cayuga." (14 Wall.)

c. So as to the charge for general damage, the Commissioner allowed $1,000, which was one man's judgment. There was no *proof* of such damage as a *fact*. "Opinion is strictly incompetent to establish the fact." It was also mere guess-work. (4 Blatch., 21.)

The vessel had been badly damaged a short time before by another collision, and once or twice before that. As to this collision the witness mainly relied upon, Webb, thought there was $2,000 general damage, because he estimated the expense of repairing her at $2,500, which is $2,500 more than it actually was. (119, § 64.) And he says, "In my judgment there must have been a strain to this vessel from this collision." (Fol. 120.) But it is impossible to discriminate between the strain of this collision and of the one or two previous. (Fol. 118.)

It is contingent, possible and consequential. Such proof cannot be esitmated in dollars. We are not surprised to hear one witness say $2,000, another $1,000, another more and another less, because they are judging, guessing, making estimates without data or calculation.

> "'Tis with men's judgments as their watches.
> None go alike, yet each believes his own."

And the chances are that all are wrong. Either may be right and all the rest wrong. So the mean or average of the whole may be right, but there is absolutely no proof of that. Courts and juries may be loose in their conclusions as to vindictive damages in cases of trespass, but in the contingent damages from unintentional maritime accidents, guess-work cannot take the place of proof. It is the party's misfortune if he cannot *prove* his case. He can recover only what *actual* damage he proves. No actual cost of repairs ever conformed to an estimate.

d. In such varying estimates of such an uncertain element of damage, the fact that the President and several of the Directors of this Company were

proved to have made affidavits, (fol. 126, 127) which they were required by Statute to make, a few months before and after this collision, in which the depreciation in value of this vessel for the whole year, from November, 1864, to November, 1865, was sworn to be only $2,000, a depreciation not varying to any extent from the depreciation of previous years, ought, it seems to us, to be held binding on the libellants. And if that be so, there is no satisfactory evidence of any permanent damage resulting from this collision. 102-112

NINTH.—The decree of the Circuit Court should therefore be reversed.

R. D. BENEDICT,
Of Counsel.

Supreme Court of the United States.

THE STEAMSHIP FAVORITA, HER TACKLE, &C.—(THE PACIFIC MAIL STEAM NAVIGATION COMPANY, *Claimants,*)

APPELLANTS,

vs.

THE UNION FERRY COMPANY OF BROOKLYN, *Libellants,*

RESPONDENTS.

BRIEF FOR RESPONDENTS.

BENJ. D. SILLIMAN,
For RESPONDENTS.

NEW YORK:
E. B TRIPP, PRINTER AND STATIONER,
105 Fulton Street.
1873.

Supreme Court of the United States.

THE STEAMSHIP FAVORITA, HER TACKLE, &C., THE PACIFIC MAIL STEAM NAVIGATION COMPANY, CLAIMANT,

Appellant,

vs.

THE UNION FERRY COMPANY OF BROOKLYN,

Respondent.

BRIEF FOR RESPONDENT.

This action was brought in the District Court of the Eastern District of New York by the Libellants, owners of the steam ferry boat *Manhassett*, against the ocean steamship *Favorita*, to recover damages for injuries sustained by the *Manhassett*, in a collision with the steamship, which occurred in the harbor of New York, on the afternoon of the 14th of April, 1865.

A decree was made in the District Court on the 3d of May, 1870, by His Honor Judge Benedict, apportioning the damages between the libellants and the claimants.

On appeal to the Circuit Court of said District a decree was made by His Honor Judge Woodruff, on the 15th of November, 1871, modifying the decree of the District Court, and awarding to the Libellants the whole amount of damages sustained by them from the collision.

From this decree the claimants appealed to this Court Nov. 16, 1871, (*fol.* 161.)

At the time of the collision the weather was clear, and the tide ebb. The steamship was proceeding up the East River, and collided with the *Manhassett*, as the latter emerged from her ferry slip at the foot of Main Street, on the Brooklyn side of the river, on her trip to the Catha-

rine Street slip, (the other terminus of the ferry), on the New York shore. The time of the collision was between three and four o'clock in the afternoon. The *Manhassett* was struck on her port side forward of the wheel, by the *Favorita*, which was passing up, not in the middle of the river, (as required by statute, as well as good navigation,) but close in with the Brooklyn shore, and across the mouths of the ferry slips.

Several vessels lay at the south side of the lower pier of the ferry slip. One of them was a large, light, ship, the stern of which projected about fifteen feet beyond the outer end of the pier. These vessels, and other shipping below, and their masts and rigging would prevent any one on the *Manhassett* from seeing the *Favorita* until after the former should pass out of the slip.

When the *Manhassett* had so far emerged from her slip as to enable her pilot to see towards the south west, past the adjacent pier and the vessels lying thereat, he discovered the *Favorita* coming up the river, within such distance from the Brooklyn side as to render a collision imminent. Perceiving that he could not escape by going ahead, he instantly rang to stop, then to back, and at the same time blew two whistles, to indicate to the *Favorita* the necessity of her sheering to the left, toward the New York shore, while he endeavored by a quick and urgent signal to his own engineer to "back her strong," to take the *Manhassett* back again into her slip. The signal was disregarded by the *Favorita*, which made no response to it, either of assent or dissent.

The *Favorita* was sheered more to the right, i. e., toward the Brooklyn shore, and in the opposite direction from that called for by the *Manhassett's* signal, and the collision ensued. The *Manhassett* was struck forward of her port wheel-house, and was greatly damaged.

POINTS.

I.

The fault was exclusively that of the *Favorita*. She was run with bad navigation, and recklessly, across the mouths of the Ferry slips, and close in with the shore, instead of being, where she should have been, in the middle of the river.

It is not necessary for the Libellant's case that we should question the "equal rights" of other vessels with those of ferry boats in the waters of the harbor, but it is submitted that very great and special care is due from steamers passing up and down the river so to cross the tracks of the ferries as not to impede the ferry boats, and still less to endanger their safety and that of their passengers.

The Court will recognise the imperative public right and necessity for the constant and uninterrupted passages of the ferry boats. New York and Brooklyn constitute (for all practical purposes) one great city, which is bisected by the narrow stream across which the boats of these ferries run. They are continuous streets of the City. They are even more indispensable than any other streets, because they are the only ways over which the people can, and must, and do pass—(the Libellants' five ferries transporting more than 40,000,000 passengers annually.) They must make their trips with the regularity, and almost with the frequency, of the shuttles in a weaver's loom. Even when night, and fog, and ice, concur as to time, the boats must continue their trips. If they should not do so, because of such hindrances, thousands, and tens of thousands of men and females, whose daily occupations

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It is not necessary for the Libellant's case that we should question the "equal rights" of other vessels with those of ferry boats in the waters of the harbor, but it is submitted that very great and special care is due from steamers passing up and down the river so to cross the tracks of the ferries as not to impede the ferry boats, and still less to endanger their safety and that of their passengers.

The Court will recognise the imperative public right and necessity for the constant and uninterrupted passages of the ferry boats. New York and Brooklyn constitute (for all practical purposes) one great city, which is bisected by the narrow stream across which the boats of these ferries run. They are continuous streets of the City. They are even more indispensable than any other streets, because they are the only ways over which the people can, and must, and do pass—(the Libellants' five ferries transporting more than 40,000,000 passengers annually.) They must make their trips with the regularity, and almost with the frequency, of the shuttles in a weaver's loom. Even when night, and fog, and ice, concur as to time, the boats must continue their trips. If they should not do so, because of such hindrances, thousands, and tens of thousands of men and females, whose daily occupations

are on opposite sides of the river from their residences, could not, at evening, reach their homes, and would be left without shelter or places to lodge. So too in the mornings, the like necessity exists, for the same multitudes are then on their way to their daily labor, whereby the great and varied business of the city is conducted. Throughout the day the throng is constant, and any suspension of the trips would result in great accumulation of persons and vehicles at the ferries, producing serious inconvenience and confusion. The Legislature of New York have deemed it necessary to protect these ferries, and the safety of the passengers upon them, by special legal provisions.

Thus, the Act of 1848, (ch. 321,) requires (for the safety of the ferry boats,) that all vessels passing between the Battery and Blackwell's Island, shall keep the centre of the river, and move at slow speed.

Three years previous to the passage of this act, in the case of *The Steam Ferry Boat Relief, Olcott's R., p.* 104, the Court, after referring to the fact that "the transits on these ferries, are, with but a very few minutes' interval of time, in constant continuance during the day," said:

* * * "Whilst the rapidity of the currents in the East River, the numerous craft of all classes passing its waters, and the safety and lives of great numbers of persons conveyed in the ferry boats on every trip exact the utmost vigilance and circumspection in the navigation, the same considerations require in reason and law, that other vessels approaching the track of these boats, under such notorious warning of the probability of their being also upon or near it, should be conducted with extreme watchfulness and precaution, so as not to impede the regular running of the ferry boats, or endanger the passengers conveyed in them; and the city government, which possesses full power over

the subject by its ordinances, interdicts all obstructions to the free course of ferry boats. Long experience has demonstrated the importance to the protection of vessels navigating the East River in that vicinity, to require steam vessels to keep as near as possible to the centre of the stream in passing up and down it, and the general usage conforms, in a great degree, to that necessity. A special law may still be demanded to give full effect to this requirement. The custom and usage, although serviceable in keeping moving vessels away from shipping moored along the piers and near the shore, and also in unmasking them from the cover of the docks and vessels in, or adjacent to the slips, has yet a more beneficial application to the navigation of ferry boats from the New York and Brooklyn shores, on the numerous ferries between those cities, it being indispensable that the exit from, and entrance into the ferry slips should not be checked or embarrassed by the presence of other vessels passing close to them.

"In this instance had the master of the tug exercised the watchfulness his position and action demanded, he could not have failed to discover his exposure to collision with the approaching ferry boat, and might easily have used the means of avoiding it; or if, instead of hugging the wharves in his evolution, he had gone out openly into the stream, he would have afforded the ferry boat opportunity to escape, or lessen the danger of meeting on her track."

The act of 1848, above cited, was passed for the purpose of obviating the evils referred to by the Court in the remarks quoted.

So too, the Act of 1814, (ch. 29.) authorizes the City of New York, by ordinance, to prohibit the anchoring of vessels at places which would interfere with the passage of the ferry boats; and the City Ordinance of 1845, (ch. 34, title 2, p. 377, sec. 14, Art. 2, ch. 26, p. 291, revision of 1859), which has been repeatedly recognized by the Courts as of binding force, reserves a belt of 360 feet across the river, for each ferry, within which no vessel shall anchor.

In *The Bedford*, 5 *Blatch.*, 200, *per Nelson, J.*—

"This ordinance was made in pursuance of a power conferred upon the City by the Legislature of the State. It is a very proper local regulation, and is binding upon all persons engaged in the navigation of the river."

The ordinance of May 8, 1839, (title 2, sec. 14), prohibits all vessels in hauling up or dropping down before either of the ferry slips, from obstructing or incommoding the boats.

The Act of Congress prohibiting other vessels from proceeding on their course, when fog and the state of the weather render it dangerous, distinctly recognizes the necessity, and the duty, of ferry boats to continue their trips at such times, and authorizes them to do so.—Act of 1852, (ch. 106), Statutes at Large, v. 10, p. 61, sec. 42.

In *The Brooklyn*, 4 *Blatch.* C. C. R., 365, Nelson, J., commends the energy of *The Brooklyn* in making her passages, although the ice was, at the time, running so strong as to force her against another vessel.

So too, the common law specially shelters ferries from hindrance or obstruction.

The State v. Mobeley, 1 *McMullen*, 44.
Woolrich on Ways, 217, *and cases cited.*
Patrick v. Ruffner, 2 *Rob.* (*Va.*) *R.*, 209, *and cases cited.*

Thus, the *Favorita* knew, when she was passing, at high speed, close to, and parallel to the Brooklyn shores, that she was moving directly across the tracks of vessels which must necessarily continue their trips, and with which she was in great danger of meeting and colliding. The *Manhasset*, on the other hand, knew that she might rightfully assume that other vessels, having no similar duties and necessities like herself, would not attempt to cross her track

near the ferry slip, but would keep broad off in the middle of the river.

It is hoped that this Honorable Court will give to the millions of people, whose lives are exposed on the ferries, the shelter of its decision that all vessels, in passing up and down the river, are bound to practice the very highest degree of care not to endanger the boats and their passengers, and, therefore, to conform to the statute, and to the rules of good navigation, which require them to pass in the middle of the river, instead of close in with the mouths of the ferry slips.

II.

The *Favorita* was thus improperly run close to the Brooklyn shore, but at what exact distance cannot be, with certainty, stated. It is certain that it was such as to make the danger of collision instant, and imminent, the moment the *Manhassett* left her slip. This fact, being beyond question, the estimates of witnesses, marked as they are by the indefiniteness and inconsistencies common to such cases, are comparatively immaterial; but we cite the substance of them, as indicating that the *Favorita* was not more than from 200 to 250, or 300 feet, from the shore when the *Manhassett* began to pass out from her slip.

1. *Titus*—(The pilot of the *Manhassett*) says she was 200 or 250 feet from shore when he first saw her, and that she was then seeking the eddy which existed near the Brooklyn shore, (*fols.* 27, 29.) The *Manhassett* was but 100 feet from the shore when she was struck by the *Favorita*—(fol. 28.)

2. *Freestone.*—(A pilot on another steamer who was at the time on a boat in the slip next below the Catharine ferry in New York.) He saw and said at the time, that the *Favorita* ought to be farther out in the river. He places the point of collision at 100 feet feet from the shore, (fol. 32.) He says the *Favorita* (before the collision) turned the bend, (Marston & Powers' Dock), heading right up along the docks; that when she passed the lower pier of Fulton Ferry she was 200 feet from that pier, and she then hauled in shore to the eddy—(fol. 33, 34.)
3. *Thomas.*—(Deckhand) says the *Favorita* was 120 feet off from shore at Marston & Powers' Dock—(fol. 36.)
4. *Conklin.*—(A passenger on the *Manhassett*, and five months' experience on Catharine Ferry,) says, that when he first saw the *Favorita* she was 150 to 200 feet from shore, (fol. 37.)
5. *Steers.*—(A deck hand on the *Manhassett*, and a water man on the river 25 years,) places the *Favorita* at 150 to 200 feet outside of the end of the piers, (fol. 38.
6. *Cole*—(Pilot 18 years) saw the occurence from his boat, as he was crossing Fulton Ferry, under the best advantage for observation as he crossed the *Favorita's* track at right angles and astern of her. He says she was off DeForest's Dock below Fulton Ferry, then came up, turned the corner, and passed at a distance of 160 to 200 feet when off Marston & Powers' Dock, and, at the time of collision, was 160 feet from the end of the pier, (fol. 40.) This accords with the testimony of Titus and of Freestone that the *Manhassett* was 100 feet from the shore at the point of collision. Half the length of the boat added, (the collision was just forward of the wheels), would make it just about 160 feet as stated by *Cole.*

   He says, (as do the above witnesses,) that the *Favorita*, was sheering in, when off Marston & Powers' dock, toward the shore, to get the eddy, (fol. 40.)
7. *McGinn.*—(Claimant's pilot) says, "The *Favorita* was within 100 yards off Fulton Ferry"—(fol. 42.)
8. *Erastus Smith.*—(Claimant's witness) says, "I should think we were about two lengths of the steamboat (400 feet) out from the end of the piers. *I did not notice the distance out particularly*"—(fol. 46.)

9. *Secor.*—(Claimant's passenger) says, "The *Favorita* was a length, or length and a-half, from end of piers, and not far from twice her length from the *Manhasset*"—fol. 48.)

10. *Westervelt.*—(Claimant's passenger) says, "The *Favorita* was "probably" 2 or 3 of her lengths from end of piers"—(fol. 52.)

11. *Robertson.*—(Claimant's sailor) says, "I *suppose* we were about 400 or 500 feet from the wharf from the Brooklyn side *at the time of the collision*"—(fol. 68.) He says, "The *Favorita* was twice her length from Brooklyn shore, 'I should suppose', (*i. e.*, 400 feet.) when he first saw the *Manhasset*. Yet, although she then sheered toward the shore, he places her 500 feet off at the collision"—(fol. 74.)

12. *Hall.*—(Captain of *Favorita*)—says, "She was, say from 600 to 800 feet from piers, 'more or less'"—(fol. 75.)

13. *Bruce.*—(Mate of *Favorita*) says, "She was 600 to 800 feet from shore—(fol. 81.)

The result of all this is, that *Titus*, *Freestone*, *Thomas*, *Conklin*, *Steers* and *Cole* place the *Favorita* within 200 to 250 feet of the shore. *Secor.*—(Claimant's witness) says, "200 to 300 feet." *McGinn.*—(Claimant's pilot) says "300 feet when off Fulton Ferry." From that point, as is shown, she was heading in more for the shore and eddy, so that he *virtually* concurs with those who place her within 200 to 250 feet when off Marston and Powers' dock.

Erastus Smith.—(Claimant's witness) guesses 400 feet; but adds, that he "*did not notice the distance.*"

When the claimant's other witnesses speak in so loose phrase, as *Westervelt*, who states the distance at 400 to 500 feet; *Robertson* the same; *Hall*, 600 to 800 feet; and *Bruce*, echoing him, says, 600 to 800 feet, the vagueness of their answers shew that they are but unreliable guess work, We submit that the weight of evidence

places the *Favorita* at about 200 to 250 feet from the shore when off Marston & Powers' dock.

As to the distance of the *Favorita* below the ferry slip, when the *Manhassett* moved out from it, we have the testimony of:

1. *Titus.*—Who shows that she was so near that he could not cross her bow. He doesn't state the distance in feet, but sensibly says, "I judge by the eye, and not by the number of feet. * * * * She was at such distance below that I could not have cleared her if I had kept on—(fol. 28.)
2. *Freestone.*—To the same effect—(fol. 31, 32.)
3. *Thomas.*—To the same effect—(fol. 36.)
4. *Conklin.*—Places her at 150 feet off, or a little more, and going very fast—(fol. 37, 38.)
5. *Steers.*—Says she was so near that the *Manhassett* couldn't cross her bow by going ahead—(fol. 38, 39.)
6. *Cole.*—Says the same thing—(fol. 40.)
7. *Erastus Smith.*—(Claimant's witness), does not give the distance; but says the proximity was such, that "When I saw her (the *Manhasssett*), come out, I thought it was dangerous for her to come out so near a vessel coming up the river. I was then under the impression that there would be a collision"—(fol. 46.)
8. *Secor.*—(Claimant's passenger witness) says that she was 200 to 300 feet from the end of the piers, and "not far from twice her length (*i. e.*, 400 feet) from the ferry boat, as near as I can judge"—(fol. 48.)
9. *Westervelt.*—(Claimant's passenger) makes the distance "about 1,000 feet"; but still thought there was imminent danger of collision—(fol. 52.)
10. *Robertson.*—(Claimant's sailor) places the boats 800 feet apart, *i. e.*, he says "we were, I suppose, about 4 times the length of the vessel from her down the stream"—(fol. 69.) But further on (at fol. 74), he diminishes the distance by saying that he "should judge" the distance 3 or 4 times the vessel's length.

11. *Hall.*—(Claimant's witness) says the *Favorita*, when he first saw the *Manhassett*, was "about 800 to 1,000 feet below" the *Manhassett*—(fol. 74.)
12. *Bruce.*—(The mate) says the *Favorita* was a little more than 600 or 800 feet below—(fol. 81.)

Thus, it is seen that there is nothing at all certain as to the distance at which the *Favorita* was below the ferry slip, or off from the shore, when the *Manhassett* came out. Claimant's witness, (*Secor*), concurs substantially with libellant's witnesses, and places the *Favorita* at about 200 to 300 feet from the shore, and "not far from" 400 feet below the line of the *Manhassett*. But every thing stated by the witnesses, of either party, can be little else than conjecture as to the distance in feet or yards. Nothing is further from the thoughts of witnesses, at such times of sudden peril and excitment, than estimates of the number of feet or yards between the vessels, or of the number of minutes or half minutes, involved in their movements.

III.

But the Court has the conclusive and reliable, and only material fact, testified to with eagerness by the claimant's witnesses, that the instant the *Favorita* saw the *Manhassett's* bow emerging from the slip the collision was deemed so imminent that all possible rapidity was applied to stop and back the *Favorita*. No such danger could have existed had she been where the law, and good navigation, alike, required her to be, or had she not been in the most culpable proximity which we allege.

The instant the *Favorita* was seen by the *Manhas-*

sett, as she was passing out of the slip, the like perception of the peril existed on her part, and the like instant action was resorted to, to avert it.

These facts are far more certain, and instructive, and decisive, than conflicting after-thought estimates and conjectures, made long after the event, as to what were the number of feet between the vessels.

On this point, (that the vessels were in perilous proximity, the moment the *Manhassett* emerged from her slip) is very clear.

Erastus Smith, (superintending engineer of claimants), who was on board of the *Favorita*, says, "The ferry boat, when I first saw her, was then coming out of her slip. I saw her come out. * * * * When I saw her come out, I thought it was dangerous for her to come out so near a vessel coming up the river. *I was then under the impression that there would be a collision. Our vessel was then * * * only two slips below Catharine Ferry. * * * I then heard the bell ring* to shut off, to stop, and then two bells to back, and I ran back to tell the engineer to back hard, *as I thought he would not know the emergency. I did call to the engineer to back hard, for I then thought there would be a collision.*" (fols. 46, 47.)

Secor, (engine builder and on board the *Favorita*) * * * "When I first saw the ferry-boat, she was coming out, her pilot house just clear of the end of the pier. The *Favorita* was then *a length or a length and a half from the ends of the piers, and not far from twice her length from the ferry-boat*, as near as I can judge. The *Favorita* is about 200 feet long, I think. The ferry-boat continued to come out for some little space. *I watched her very closely, I assure you.* She was coming out, and we had rung one bell to stop, and had stopped. * * * *I don't think she*, (*the Manhassett*) *had got out as far as the bow of the* Favorita, *when she began* backing. I would not be positive as to that, but I don't think she had." * * * (fols. 48, 49.)

Westervelt, (ship builder 22 years, on the *Favorita*,) "I just saw the boat when she was coming out of the slip—the bow just out of the slip. *I looked in the direction of our pilot, believing that there would be a collision, unless proper judgment was used by the pilots of both vessels*, as we were distant then about 1000 feet. The pilot on the ferry boat stood on his course. We rang the bell to stop our vessel, which was done immediately." (This witness in stating that the vessels were a thousand feet apart, varies as much, in that respect from claimant's other witnesses, as well as those of the libellants, as he does with respect to the tide, which, he says "was flood, strong flood," while they all say it was ebb.) (fol. 52, 53.)

Robertson, (claimant's man at the wheel,)

"Q. What was the first you saw?

A. I saw the ferry boat come out of the slip. That was the first I saw. I saw the smoke stack, moving ahead.

Q. What was done on board the *Favorita*?

A. The pilot told me to put the helm a port and I did so. He slowed her down and stopped her, and reversed the engines.

Q. How quick did he give the signals to slow, stop, and back?

A. *As quick as he possibly could* to give the engineer time to slow her down, and stop her altogether." (fol. 69.)

Hall, (master of the *Favorita*) saw the ferry-boat when she came out of the slip. * * * "The pilot *immediateiy* rang the bell to stop the engine when we first saw her come out of the slip, and then rang to back the engine which was immediately done, at the same time porting the helm for the purpose of passing under the stern of the ferry-boat, which there was plenty of room to do, if she had gone on." (fol. 76.)

Such is the testimony of *Claimant's* witnesses as to the extremity of the peril caused by the *Favorita* approaching closely and suddenly the mouth of the ferry-slip. Equally explicit, and to the same effect is that of Libellants.

Titus, (pilot of *Manhassett*,) shews that when he came

out of the slip, and saw the *Favorita*, he could not have gone clear of her had he kept on.

"I stopped my boat and backed her intantly, blowed two whistles. * * * When I blew the whistle, she sheered in toward Brooklyn." (fol. 28.)

Freestone, (a steam-boat pilot who saw the collision from the New York shore at slip next below Catharine Ferry.) said to a person along side of him, that the *Favorita* "ought to be farther out in the river, * * * I then saw the bow of the ferry-boat just coming out of the slip. I then told the man alongside of me that I thought there was going to be a collision, I should judge the ferry boat got out 100 feet from the end of the pier, when they came together. The steamer was heading, quartering the tide in, towards Brooklyn, * * * By hauling in, she was in the eddy. I thougt there would be a collision, because I was satisfied that the boat could not see him while in the slip, she was in so close, and going so fast. I did not think there was any chance after the boat got outside of the slip." (fols. 32, 33.)

Cole, (pilot crossing Fulton Ferry,) * * * "I saw the ferry-boat, as she passed out of the slip. I thought there would be a collision then. I thought the ferry-boat could not get out of the way from him. The *Favorita* was going pretty fast. * * * She was sheering in shore toward the eddy." Thinks the ferry-boat could not have cleared her by going on. (fol. 40.)

Thus, it was clear that the case was *desperate* at the outset; at the very instant the vessels sighted each other.

Even had there, in this moment of sudden peril, been any want of sound judgment, and right action on the part of the *Manhasset*, (we certainly claim that her course was, in all respects, proper), yet the peril, having resulted from the claimant's fault, the penalty is upon them. On this point we desire to quote the words of His Honor Judge Woodruff in this case, from 8 *Blatch.*, on p. 540.

"There is some conflict of testimony on the question whether the *Manhassett* could, by continuing to advance, have cleared the steamship. The result of her advancing, instead of stopping, is, upon all the evidence, at least, doubtful. The pilot was acting in good faith in a situation of great peril, and an opinion formed after the event, which should pronounce his judgment erroneous, ought not to be decisive of fault on his part, casting upon the libellants the loss. It is a familiar and well settled rule, that when a vessel is placed in imminent jeopardy by the fault of another, the discretion, which her mariners are called on instantly, and in the very jaws of the peril, to exercise, to effect deliverance, is not to be closely critised, nor their conduct to be condemned, unless very plainly negligent or unskilful. Sudden danger and unavoidable alarm, in a degree, disqualify for the exercise of that calm weighing of chances, and a deliberate choice of the best possible mode of escape, which may, in other circumstances, be required; and if, therefore, I should conclude that had the *Manhassett* continued to advance into the river she would have cleared the *Favorita* (which I greatly doubt), that would not be decisive. I think the case is clearly within the rule I have stated. The *Favorita*, coming at a speed of from eight to ten miles an hour, was almost upon her before it was possible for the *Manhasset* to discover her approach. Advancing at from 600 to 800 feet a minute, and hardly that distance removed when seen by the pilot, there was no time for deliberation, and, in my judgment, upon the whole case, no fault can be imputed to him in what he did.

"The whole fault was on the part of the *Favorita* in putting the *Manhassett* in such peril. * * * * *

"But the exigencies of business, and the necessities of the public, and the resulting condition of a great thoroughfare like the East River, are to be recognized and respected by all who navigate its waters. The *Favorita*, or those in her management, knew, or were bound to know this, and it ought to be accounted a gross fault to pass along the mouths of the numerous ferry slips in such proximity thereto, as in the present case, when going at a speed, at which all the efforts made to stop her, when danger of collision appeared, were ineffectual. The reasons upon which the statute requiring her to keep as near the middle of the river as possible is founded, are reasons of ordinary prudence, and obviously tending to

safety of navigation, whether the statute is, or is not, of binding force as a statute.

"Had the *Favorita* kept suitably distant from the shore, her speed was, no doubt, unobjectionable, and it is, therefore, her path, and not her speed, which condemns her; and, if any circumstances of convenience, whether the avoidance of other vessels, or the like, invited her to run near to the piers, she was bound to conform to the exigencies of that situation, and make her advance such as not to imperil other vessels pursuing their ordinary, accustomed, well-known business, with which those in the management of the *Favorita* must be taken to have been familiar. This view of the fault of the *Favorita* is, I think, intensified by the fact not before mentioned, that, when the *Manhassett* began to move out of her slip, when the *Favorita* could not be seen from the *Manhassett*, the smoke stack of the latter could be seen, and was seen from the *Favorita*, moving out. There was then time for the *Favorita* to slow, stop, go out towards the centre of the river, or do whatever was requisite to avoid her, without involving her in the condition of danger from which she made her ineffectual endeavor to escape. I am constrained, by the convictions produced by the testimony, to hold that the consequences of this collision should be wholly borne by the *Favorita*."

IV.

The Conduct of the Manhassett was Correct.

Titus.—Pilot of the *Manhassett* shews, (as do the libellant's other witnesses), that the moment he perceived the *Favorita* he slowed, stopped and reversed as rapidly as it was possible to do; that the headway was such that actual stopping and *backing* were impossible at once, but that his boat forged ahead to the extent of 100 feet, or thereabouts, from the mouth of the slip, and that when she stopped and backed some 8 or 10 feet, the *Favorita*, which (according to her own account) was sheering in to

the Brooklyn shore, from a point out in the river 400, 600 or 800 feet off shore, (*Hall's* testimony as above) only succeeded in striking the *Manhassett* several feet forward of the wheel, and towards the New York end. This shows that had not the *Favorita* sheered towards the Brooklyn shore, she might have passed clear and ahead of the *Manhassett*. If all her *sheering in* could only enable her to reach the forward part of the *Manhassett*, she would have cleared her, had she obeyed the signal of the latter, to which she expressed no dissent.

The speculations of *Westervelt*, *Secor* and *Erastus Smith* as to the possibility of the *Manhassett* escaping by the *Favorita's* going across her bow, are not entitled to weight. Neither of them is a waterman or expert. That she could not thus have escaped was the distinct opinion of *Titus*, *Freestone*, *Thomas*, *Steers* and *Coles*, each of whom is an expert.

McGinn, *Robertson*, *Hall* and *Bruce* (claimant's witnesses), in self defence, state the opposite opinion, but their misconduct caused the whole peril, and there is no reason for adopting their dicta in the face of such incompatible facts as are proven, even by the claimants.

The proximity of the *Favorita*, when the vessels first sighted each other, was such that it was impossible to stop and reverse her engine until the instant of collision. Her witnesses shew that not an instant was lost in doing so. That she did not reverse until the moment of collision, if at all, is shown by *Titus* (fol. 31), *Freestone* (fol. 32), *Thomas* (fol. 35), *Conklin* (fol. 37), *Steers* (fol. 39), *Coles* (fol. 41), *Shollet* (fol. 56), libellant's witnesses, and by *Secor* (fol. 50) and *Burns* (fol. 60)

claimant's witness. The latter was the *Favorita's* engineer, and the most that he can conjecture is that he got one turn back at the moment of collision.

The *Favorita* struck the *Manhassett* with such violence as to cut through the broad guards of the *Manhasset*, and into her hull (*Titus*, fol. 30; *Wright*, fol. 92, *et seq*; *Martin*, fol. 9~, *et seq*). This is conclusive evidence that the *Favorita* was not at the distauce claimed for her, and *Westervelt*, her witness, says she was *going at the rate of* 10 *miles*, and struck the *Manhassett* at the rate of *eight miles* (fol. 53)

Claimant's suggestion that the *Manhassett* before starting from her slip, should have seen the *Favorita*, is not supposed to be material. The former had no possible reason to look for the *Favorita* there: The statute requiring the latter to be in the middle of the river was notice to the *Manhassett* that she could not be dashing along across pier ends and ferry slips. If the *Manhassett* could have seen the *Favorita* from her slip. the *Favorita* could have seen the *Manhassett in* her slip, and being herself in the wrong place, should have carefully looked for her, and should have stopped to let her pass out.

The *Manhassett* had no reason to expect the *Favorita* The latter had reason to expect the *Manhassett*, and should, for every reason, have given a signal notifying her own presence.

That the *Manhassett*, in her slip, could not have seen the *Favorita* is fully shown by the testimony of *Luther Smith* (fols. 58 and 59), as well as by *Titus*, *Freestone*, *Garrison*, *Secor and Westervelt*. The intervening vessels effectually shut her out.

V.

Claimant's excuse for being close in shore, (that he went there to avoid other vessels which he met,) is untenable and insufficient. The law prescribes what he shall do in such case if he meets other vessels, viz., stop, and let them pass. It would be novel navigation for the Boston, and other, steamers, on their daily trips, to keep up a constant sheering, and curveting, across and around, in all directions, to avoid other vessels. *Hall*, the Captain of the *Favorita* shews (fol. 78,) that the vessels in the river were only in the usual numbers, "the same as every day." The statute is a nullity if under such circumstances, it is to be thus disregarded. The pretext that vessels were in the path of the *Favorita* is without foundation. *Shollet*, (fol. 55,) *Cole*, (fol. 41,) *Garrison*, (fol. 57.)

It seems plain from all the evidence that the *Favorita* was simply seeking and keeping the eddy, (a practice that the statute was intended to prevent.)

An added wrong in the *Favorita's* going close into shore (if her own story is true as to her distance below the ferry) was the newness of her engine which prevented its sufficiently, and seasonably, stopping and backing. That such was its non-action is indicated by *Titus* (fol. 31); *Freestone* (fol. 32); *Thomas* (fol. 36); *Conklin* (fol. 37); *Steers* (fol. 39); *Cole* (fol. 41); *Smith* fol. 50); *Brown* (fol. 60).

All witnesses (libellants and claimants alike) shew that the *Manhassett's* engine stopped and backed instantly.

VI.

The *Manhassett* simultaneously, signalized by her two whistles, and stopping and backing, what she deemed indispensable, i. e., that the *Favorita* should starboard her helm, and pass in front of the *Manhassett*, and toward the middle of the river.

The *Favorita*, by not dissenting, concurred, but instead of doing as she thus agreed to do, she immediately ported her helm, and sheered in toward the Brooklyn shore, and upon the *Manhassett*. To say that there was no use in her dissenting, because it was too late for either to change, is but to say that the two ships were so close at the instant the *Manhassett* left the slip, as to preclude deliberation or concurrent action. And this sustains our view of the case. These signals were simultaneous with the vessels sighting each other.

VII.

The objection by the claimants to the allowance of demurrage by the Commissioner, on the ground that no *charter rate* per day existed for ferry-boats, and the fact that the Libellants had another ferry boat, which they kept for emergencies, and which they put on the ferry, in the place of the *Manhassett*, while she was undergoing repairs, caused by the collision, is untenable. *The Cayuga*, 2 *Benedict*, 125. *S. C.* 14 *Wallace*, 270.

VIII.

The decree should be for the libellants, and that claimants pay all damages, interest and costs.

BENJ. D. SILLIMAN,

for Libellants, (Respondents.)